

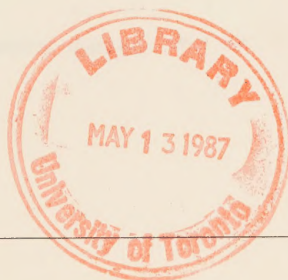
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Bill 133

An Act to amend the Liquor Control Act

Mr. Shymko



1st Reading October 15th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to allow the Liquor Control Board of Ontario to prohibit manufacturers from selling a product unless the chemical ingredients are set out on the label of the product in the manner established by the Board.

Bill 133**1987****An Act to amend the Liquor Control Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 3 of the *Liquor Control Act*, being chapter 243 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

- (o) to prohibit manufacturers from selling a product unless all of the chemical ingredients contained in the product, including fungicides, pesticides, metals, synthetic dyes, organic and non-organic acids, are identified and listed on the labels of the product in such measurements as are set out in the Board guidelines regarding the composition of beer, liquor, spirits and wine.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Liquor Control Amendment Act, 1987*. Short title

Bill 142

An Act to amend the Ontario Energy Board Act

The Hon. V. Kerrio
Minister of Energy



<i>1st Reading</i>	October 23rd, 1986
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	

EXPLANATORY NOTES

SECTIONS 1 and 2. These amendments are consequential on the repeal of section 26 of the Act by section 3 of the Bill and the addition of a new Part I-A of the Act by section 4 of the Bill.

SECTION 3. Section 26 of the Act places restrictions on the disposition, by sale, lease or otherwise, of a gas utility and on the acquisition by any person of more than 20 per cent of its shares; these restrictions, somewhat expanded, are now found in section 37b of the Act, as set out in section 4 of the Bill.

SECTION 4. Part I-A is added to the Act to set rules of conduct for gas utilities. New section 37a defines the various terms set out therein, for the purposes of the Part.

New section 37b contains substantially the provisions now found in section 26 of the Act; clause (1) (c) is new, as is subsection (5), permitting the Board to dispense with a public hearing where warranted and subsection (6), authorizing the imposition of terms and conditions.

New section 37c requires that the majority of the directors of a gas utility be not directors, officers or employees of any associate of the utility; this section does not come into force until July 1st, 1987, in order to give time to achieve compliance.

New section 37d requires a utility to file quarterly with the Board a report of all affiliated transactions that occurred in the preceding quarter; the Board is empowered to require the utility to furnish further information or documentation in respect of any such transaction.

New section 37e prohibits a utility from engaging in or investing in another type of business without the approval of the Board; a two-year period is allowed for the utility to either divest itself of the prohibited business or investment or obtain the approval of the Board to its continuance, if such business was entered into between April 9, 1986 and the day upon which this Act receives Royal Assent. The section does not apply to a business entered into prior to April 9, 1986.

New section 37f sets out various matters or activities prohibited to a gas utility without the approval of the Board and is designed to insulate the utility from involvement in, and the risks attendant upon, non-utility business and activities.

New section 37g empowers the Board to impose terms and conditions to an approval granted by the Board under section 37e or 37f and sets out matters to be considered by the Board when determining whether to grant approval under those sections and when determining whether to recommend the leave of the Lieutenant Governor in Council be given under section 37b.

New section 37h provides for investigation by the Board into alleged contraventions of the provisions of the new Part I-A and for an application to the Supreme Court by the Minister for an order, where appropriate, restraining any such contravention or declaring void any transaction entered into in contravention of the Part.

New section 37i provides that an undertaking given by any person in respect of a gas utility prior to the coming into force of the new Part I-A, if inconsistent with any provision of that Part, is of no force or effect; in addition the Board is empowered to dispense with compliance with all or part of such an undertaking if the Board is of the opinion it would be consistent with the public interest to do so.

SECTION 5. The Act, except for the provision respecting directors set out in new section 37c, is deemed to have come into force on April 9th, 1986.

Bill 142**1987****An Act to amend the Ontario Energy Board Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 13 (2) of the *Ontario Energy Board Act*, being chapter 332 of the Revised Statutes of Ontario, 1980, is amended by striking out “section 26” in the first line and inserting in lieu thereof “section 37b”.

2. Subsection 15 (3) of the said Act is amended by inserting after “section 23” in the second line “section 37b”.

3. Section 26 of the said Act is repealed.

4. The said Act is amended by adding thereto the following Part:

PART I-A**CONTROL AND CONDUCT OF UTILITIES**

37a. In this Part,

Definitions

“affiliated transaction” means any transaction or transfer or exchange of goods, services or information, whether or not for consideration, between a gas utility and any associate of the gas utility, and includes the provision of a benefit by a gas utility to an associate;

“associate”, when used to indicate a relationship with a person, means,

- (a) any person who controls such person,
- (b) any person whom the person controls,
- (c) another person who is controlled by a person who also controls such person,

- (d) a partner of that person acting by or for the partnership of which they are both partners,
- (e) a trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
- (f) a person of the opposite sex to whom the person is married or with whom the person is living in a conjugal relationship outside marriage,
- (g) a son or daughter of the person,
- (h) a relative of the person or of a person mentioned in clause (f), other than a person referred to in clauses (f) and (g), who has the same home as the person, or
- (i) any person who is obliged to act in concert with such person in exercising voting rights in respect of the shares of a company;

“control”, “controlled” and “controlling”, in respect of a person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through ownership of voting securities or by contract or otherwise;

“gas utility” means a person who supplies natural gas to a consumer in Ontario or a person who carries gas by a transmission line in Ontario;

“security” includes any share of any class or series of shares and any debt obligation, other than one which is payable in full within two years of its creation, of a body corporate;

“voting share” means any security carrying a voting right under all circumstances or which is convertible into or may be exchanged for such a security.

Leave of
L.G. in C.

37b.—(1) No gas utility, without first obtaining the leave of the Lieutenant Governor in Council, shall,

- (a) sell, lease, convey or otherwise dispose of its transmission, distribution or storage system, or any part thereof that is used or useful in serving the public, as an entirety or substantially as an entirety;
- (b) merge or amalgamate, or otherwise combine directly or indirectly, with any other company; or

- (c) alone or in conjunction with any associate acquire or hold more than 5 per cent of the voting shares of another gas utility or of a person who controls another gas utility.

(2) No person, without first obtaining the leave of the Lieutenant Governor in Council, shall acquire such number of voting shares of a gas utility that together with shares already held by such person or by such person and an associate or associates of such person will in the aggregate exceed 20 per cent of the voting shares outstanding of that gas utility.

Acquisition
of share
control

(3) Clause (1) (a) does not apply to a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness.

Mortgages

(4) An application for leave under this section shall be made to the Board, which shall hold a public hearing and submit its report and opinion with respect to the application to the Lieutenant Governor in Council.

Public
hearing

(5) Notwithstanding subsection (4), the Board may dispense with the holding of a public hearing if, after giving or causing to be given public notice of its intention to do so, it is satisfied that the circumstances of the case so warrant and that the dispensation will not adversely affect the public interest.

Dispensing
with public
hearing

(6) Any leave granted under this section may be made subject to such terms and conditions as in the opinion of the Lieutenant Governor in Council are required in the public interest.

Terms and
conditions

37c. The majority of the members of the board of directors of a gas utility shall be persons who are not directors, officers or employees of an associate of the gas utility.

Directors

37d. A gas utility shall quarterly file with the Board a report of all affiliated transactions which took place in the immediately preceding quarter, together with such information and documentation relative thereto as the Board requires all of which shall be made public by the Board.

Filing
accounts of
affiliated
transactions

37e.—(1) A gas utility shall not itself or through a person it controls engage or invest in any business other than that of a gas utility without the prior approval of the Board.

Engaging
in another
business

(2) Subsection (1) shall not apply in respect of a business in which a gas utility was engaged on the 9th day of April, 1986 or to an investment made by the gas utility prior to that date.

Non-
application
of subs. (1)

Saving

(3) Where, subsequent to the 9th day of April, 1986 and prior to the day this Act receives Royal Assent, a gas utility engages or invests in a business that requires the approval of the Board under subsection (1), the gas utility may continue the business or investment for a period of two years from the 9th day of April, 1986, without the approval of the Board.

Where
approval
of Board
required

37f. A gas utility shall not, without the prior approval of the Board, directly or indirectly,

- (a) advance funds or otherwise confer a benefit to or to the order of or for the benefit of an associate;
- (b) acquire or pay for securities of or held by an associate;
- (c) become responsible for the indebtedness or obligations of any person; or
- (d) pay a dividend, or take other action such as redemption or purchase of shares for cancellation, which will result in the common equity component of the gas utility's capital structure falling, and remaining for a period of in excess of ninety days, below the level approved or considered appropriate by the most recent applicable decision of the Board.

Terms and
conditions

37g.—(1) The approval of the Board under section 37e or 37f may be made subject to such terms and conditions as in the opinion of the Board are reasonably required in the public interest.

Matters
taken
into account
by Board

(2) The Board, in considering,

- (a) under subsection 37b (4) whether to recommend approval and, if so, whether to recommend the attachment of terms and conditions thereto; and
- (b) under section 37e or 37f whether to grant approval and, if so, whether to attach terms and conditions thereto,

shall take into account all such matters as to it appear relevant, including, but not limited to,

- (c) whether the activity or transaction raises actual or potential conflicts of interest with the gas utility business;

- (d) the extent to which the gas utility business and gas utility customers will be protected from potential adverse consequences of the proposed activity or transaction;
- (e) whether the activity or transaction would likely
 - result in the control of a gas utility by a person or persons not ordinarily resident in Canada;
- (f) the potential impact of the proposed activity or transaction on the cost and quality of gas utility service to customers;
- (g) the potential impact of the proposed activity or transaction on the availability and cost of capital for gas utility purposes;
- (h) the potential for inappropriate diversion to non-utility purposes of gas utility assets including cash, human and management resources and information;
- (i) the accounting for and allocation of costs and benefits as between utility and non-utility businesses, and the ease and effectiveness with which the Board will be able to monitor the same;
- (j) the relationship of a proposed new activity or investment to the gas utility business; and
- (k) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

37h.—(1) The Board shall monitor compliance by gas utilities with the provisions of this Part. Monitoring
by Board

(2) The Board of its own motion may, and at the request of the Minister shall, investigate and report to the Minister regarding instances of alleged contravention of the provisions of this Part or of any terms and conditions imposed thereunder. Investigation
by Board

(3) On application to the Supreme Court made on behalf of the Minister, the Court may make such order as may be necessary to prevent the furtherance or the continuance of a contravention of a provision of, or a term or condition made under, this Part or to declare null and void a transaction entered into in contravention thereof. Application
to Supreme
Court

Other
remedies
not affected

(4) Nothing in subsection (2) or (3) limits any remedy that may be available at law to any person or limits the Board in any remedy or course of action otherwise available to the Board under this Act, for a contravention of the provisions of this Part.

Definition

37i.—(1) In this section, “undertaking” means an undertaking in writing given by a person in respect of a gas utility to the Lieutenant Governor in Council before the day this Part comes into force.

Where
undertaking
inconsistent
with
Part I-A

(2) To the extent that an undertaking is inconsistent with any of the provisions of this Part, the undertaking shall be deemed to be of no force or effect.

Power of
Board to
dispense with
compliance
with
undertaking

(3) The Board may, by order, subject to the provisions of this Part, dispense with compliance in whole or in part with an undertaking, if in the opinion of the Board to do so would be consistent with the public interest.

Commence-
ment

5.—(1) This Act, except section 37c of the said Act, as enacted by section 4 of this Act, shall be deemed to have come into force on the 9th day of April, 1986.

Idem

(2) Section 37c of the said Act, as enacted by section 4 of this Act, comes into force on the 1st day of July, 1987.

Short title

6. The short title of this Act is the *Ontario Energy Board Amendment Act, 1987*.

Bill 149

An Act to amend the Occupational Health and Safety Act

Mr. Martel



<i>1st Reading</i>	November 18th, 1986
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	

- (e) approve all protective devices used or worn in the work place by the workers;
- (f) conduct all assessments and develop all control programs that may be required in regulations related to designated substances;
- (g) establish programs to educate and train workers in health and safety procedures;
- (h) upon the request of the workers, establish a voluntary medical monitoring program to be accompanied by work place monitoring at the expense of the employer;
- (i) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge.

(4) Subsection 8 (8) of the said Act is amended by striking out “not more often than” in the third and fourth lines and inserting in lieu thereof “at least”.

(5) Subsection 8 (9) of the said Act is repealed and the following substituted therefor:

Power to
inspect

(9) The members of a committee who represent workers shall designate one or more such members to investigate cases where a dangerous situation has been reported by a worker or where a worker is killed or injured at a work place from any cause and one of those members may, subject to subsection 25 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director and to the committee.

(6) Subsection 8 (12) of the said Act is repealed and the following substituted therefor:

Time off
for duties

(12) A member of a committee is entitled to such time from work as is necessary to perform and discharge his or her duties under this Act including but not limited to,

- (a) collecting data;
- (b) taking test samples;
- (c) preparing for and attending committee meetings;
- (d) inspecting documents;
- (e) attending training sessions; and
- (f) investigating worker complaints and work place accidents,

and the time so spent shall be deemed to be work-time for which the worker is paid at the regular or premium rate, as applicable.

(7) Subsection 8 (13) of the said Act is repealed and the following substituted therefor:

(13) No committee dealing with occupational health and safety issues shall be established or continued in a work place unless, Other committees

- (a) the committee consists of at least two persons of whom at least half shall be workers who do not exercise managerial functions to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions;
- (b) the approval of the joint health and safety committee is obtained; and
- (c) the committee takes its directions from and reports to the health and safety committee.

(8) Section 8 of the said Act is amended by adding thereto the following subsection:

(15) Employers, supervisors and workers shall answer all questions and provide any information required for the purpose of carrying out an investigation under subsection (9). Duties during investigation

3. Section 9 of the said Act is amended by adding thereto the following subsection:

(4) The information referred to in subsection (3) includes all government-conducted tests, studies, reports and correspondence related to work place health and safety. Nature of information

4. Clause 14 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) the equipment, materials and protective devices as prescribed are provided at the expense of the employer.

5.—(1) Subsection 15 (1) of the said Act is amended by striking out “and” at the end of clause (h) and by adding thereto the following clauses:

- (j) provide, at the employer’s expense, office space, equipment and clerical assistance to enable the health and safety committee to carry out their functions;
- (k) provide, at the employer’s expense, at least one week per year time off for worker representatives and worker members of the health and safety committee to receive training in occupational health and safety measures;
- (l) provide, at the employer’s expense and during working hours, the opportunity for probationary workers to receive education and training in health and safety by a worker representative; and
- (m) bear the cost of any medical monitoring program including compensating a worker for the time spent visiting his or her doctor and any expense incurred in the course of the visit.

(2) Section 15 of the said Act is amended by adding thereto the following subsections:

Reassignment (3) An employer shall ensure that a worker does not suffer any wage loss as a result of being reassigned other duties for health reasons.

Alternative work (4) Where a reassignment is not possible, an employer shall, at the employer’s expense, retrain workers and find them alternative work elsewhere and make up for any wage loss that results from such transfer.

6.—(1) Subsection 23 (1), as amended by the Statutes of Ontario, 1984, chapter 55, section 224, and subsection (2) of the said Act are repealed.

(2) Subsection 23 (3) of the said Act is repealed and the following substituted therefor:

(3) A worker may refuse to work or do particular work where the worker has reason to believe that his or her health or safety or that of any person is in danger for whatever cause.

Refusal
to work

(3) Section 23 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 55, section 224, is further amended by adding thereto the following subsection:

(5a) A worker representative on the health and safety committee may,

Powers of
worker
representa-
tives

- (a) exercise, on behalf of the worker, his or her right to refuse to work under dangerous conditions; and
- (b) order that unsafe operations be shut down where it appears that the health or safety of a worker is threatened.

(4) Subsection 23 (6) of the said Act is repealed and the following substituted therefor:

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that his or her health or safety continues to be endangered for whatever cause, the worker may refuse to work or do the particular work and the employer or worker or a person on behalf of the employer or worker shall notify an inspector thereof.

Refusal to
work after
investigation

(5) Section 23 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 55, section 224, is further amended by adding thereto the following subsections:

(6a) All workers affected by a work stoppage under this section are entitled to full wages and benefits during the work stoppage.

Wages
payable
during work
stoppage

(6b) Any loss of production or revenue that results from a work stoppage under this section shall be borne by the employer.

Loss from
work
stoppage

7. Subsection 24 (2) of the said Act is amended by inserting after "worker" in the first line "union representative, worker health and safety representative, or any interested party".

8. Section 28 of the said Act is amended by adding thereto the following subsection:

Inspector
designated
provincial
offences
officer
R.S.O. 1980,
c. 400

(1a) An inspector is designated as a provincial offences officer under the *Provincial Offences Act* and may issue a certificate of offence under that Act in respect of the following offences, namely,

- (a) failure to establish a health and safety committee under subsection 8 (2);
- (b) failure to post a copy of this Act as required under clause 14 (2) (h); or
- (c) failure to provide the information required under clause 8 (6) (i) or the report required under section 25 or 26.

9. Subsection 41 (2) of the said Act is amended by striking out “and” at the end of paragraph 22 and by adding thereto the following paragraphs:

- 24. establishing time limits for an employer to comply with recommendations made by the health and safety committee;
- 25. prescribing a code of practice respecting the procedure of a health and safety committee;
- 26. establishing a joint committee composed of representatives of management and labour to recommend changes to the regulations.

Commence-
ment

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the *Occupational Health and Safety Amendment Act, 1987*.

Bill 150

An Act to regulate Truck Transportation

The Hon. E. Fulton

Minister of Transportation and Communications



1st Reading November 19th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill introduces reform of the regulation of for hire trucking in Ontario. The new Act will replace the *Public Commercial Vehicles Act* and is complemented by the *Highway Traffic Amendment Act, 1987* and the *Ontario Highway Transport Board Amendment Act, 1987*.

The Bill changes the entry test from an examination of the need for additional service to an examination of the fitness of the applicant.

In order to obtain a licence under the new Act, all applicants must pass a fitness test. At the time of the application, the applicant or an employee must hold a Certificate of Competency which will be obtained by passing a written test. This test will cover that prospective truckers have knowledge of safe truck operation, trucking legislation, safety, insurance requirements and maintenance practices. Another factor will be the applicant's past performance record.

For the first five years, the fitness test will be supplemented by a public interest test. This test will take the form of a public hearing and will be used only when any interested party can demonstrate that granting the licence would have significant detrimental effect on the public interest.

The Bill also provides for the establishment of an Advisory Committee on Truck Transportation. The Minister will appoint members of the committee drawing from Government, the OHTB, shippers and carriers. The committee will advise the Minister on the effectiveness of the new Act and, in particular, on the need for continuing the public interest test beyond five years.

Bill 150

1987

An Act to regulate Truck Transportation

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“Board” means the Ontario Highway Transport Board;

“commercial motor vehicle” means a motor vehicle with a permanently attached truck or delivery body and includes a truck tractor used for hauling purposes, but does not

include an ambulance, hearse, casket wagon, fire apparatus, bus or motor vehicle commonly known as a tow truck when the tow truck is being used as a tow truck;

“commercial vehicle” means,

R.S.O. 1980,
c. 198

- (a) a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers as defined in the *Highway Traffic Act*,
- (b) a dual-purpose vehicle or a combination of a dual-purpose vehicle and a trailer as defined in the *Highway Traffic Act*, or
- (c) the combination of a motor vehicle, as defined in the *Highway Traffic Act*, drawing a trailer or trailers, as defined in that Act;

“Committee” means the Advisory Committee on Truck Transportation;

“compensation” includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly;

“dual-purpose vehicle” means a motor vehicle, other than one commonly known as a passenger car, designed by the manufacturer for the transportation of persons and goods;

“goods” includes all classes of materials, wares and merchandise and live stock;

“highway” means a highway as defined in the *Highway Traffic Act*;

“licensee” means the holder of an operating licence issued under this Act;

“Minister” means the Minister of Transportation and Communications;

“Ministry” means the Ministry of Transportation and Communications;

“officer” means a member of the Ontario Provincial Police Force or an officer of the Ministry designated in writing by the Minister to assist in the enforcement of this Act;

“operate” means to cause to be driven on a highway and “operated” has a corresponding meaning;

“operating authority” means a specific authority to operate that is contained within an operating licence;

“operating licence” means an operating licence issued under this Act containing one or more operating authorities;

“owner” means the person in whose name the vehicle portion of a permit is issued for a motor vehicle under the *Highway Traffic Act*; R.S.O. 1980,
c. 198

“prescribed” means prescribed by the regulations;

“public truck” means a commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers drawn by it, operated by the holder of an operating licence;

“regulations” means the regulations made under this Act;

“road construction materials” means rubble carried to or from a construction or demolition site and 01 928 — animal or poultry manure, 14 1 — dimension stone, quarry, 14 219 — broken or crushed stone or riprap, not elsewhere classified, excluding ground or otherwise treated, 14 41 — gravel or sand, excluding abrasive, 14 715 — rock salt, crude, crushed, lump or screened, excluding sodium chloride (common salt), 14 719 — chemical or fertilizer minerals, not elsewhere classified, excluding ground or otherwise treated, 14 919 — non metallic minerals, not elsewhere classified, loam, soil or topsoil, not elsewhere classified, excluding ground or otherwise treated at mine site or fuels, 28 126 32 — calcium chloride, liquid, 28 126 33 — calcium chloride, other than liquid, 28 181 7 — urea, other than liquor or liquid, 28 71 — fertilizers excluding milled, mined or otherwise prepared, natural boron, sodium or potassium compounds, 29 116 — asphalt pitches or tars, petroleum, coal tar, coke oven or natural gas, 32 952 15 — cinders, clay, shale (expanded shale), slate or volcanic (not pumice stone) or haydite, 33 112 — furnace slag, excluding ground or otherwise treated;

“STCC” means the Standard Transportation Commodity Code filed with the Canadian Transport Commission;

“STCC number” means a number in STCC representing the goods or materials classified under that number;

“toll” means any fee or rate charged, levied or collected for the transportation of goods in or on a public truck.

Idem

(2) Where, in this Act or the regulations, a reference to goods or materials is preceded by a STCC number, the goods or materials referred to are those indicated in the STCC by reference to that number.

Purpose

2. It is hereby declared that an effective goods movement system by highway is essential to advance the interests of the users of transportation and to maintain the economic well-being and growth of Ontario and that these objectives are to be achieved by the regulatory scheme established by this Act which is to be interpreted so as to advance the objective that the system will,

- (a) foster productive, fair and innovative competition and the existence of a dependable and viable trucking industry in furtherance of the public interest; and
- (b) be of benefit to the users of transportation services and not for the protection from competition of individual providers of such services.

Operating
licence
required to
transport
goods for
compensation

3.—(1) No person shall operate a commercial vehicle to carry goods of any other person for compensation unless it is done,

- (a) under an operating licence held by the person operating the vehicle; and
- (b) pursuant to the licence.

General
authority

(2) Every operating licence authorizes the holder thereof to carry 01 928 1 — unprepared manure from animal, bird, dog, fowl, goat, sheep or guano, 14 719 — chemical or fertilizer minerals, not elsewhere classified in STCC, 28 181 70 — urea, other than liquid and 28 71 — fertilizers in bulk to or from any point within Ontario during April, May and June in a commercial vehicle that is not a tank vehicle.

Owner-driver
licence,
single-source
licence
limitations

(3) An operating licence that is an owner-driver or single-source operating authority authorizes the operation of a commercial vehicle to carry goods for compensation only when a notice of the contract under which the particular vehicle is being operated has been filed with the Ministry as prescribed.

Exception

(4) Subsection (1) does not apply to prohibit the carriage of,

- (a) goods solely within a commercial zone designated under section 14 or an urban municipality;

- (b) fresh fruit and fresh vegetables grown in continental United States of America or Mexico;
- (c) goods used on farms and farm products that are 01 1 — field crops, 01 2 — fresh fruits or tree nuts, 01 3 — fresh vegetables, 01 91 — horticultural specialties, 01 99 — farm products, not elsewhere classified in STCC, 01 41 — live stock and 01 92 — animal specialties that are carried in a commercial motor vehicle equipped with not more than three axles that does not draw a trailer;
- (d) 01 421 10 — milk, fresh, unprocessed and 20 261 — bulk fluid milk, skim milk or cream carried on behalf of The Ontario Milk Marketing Board;
- (e) wheat by a person appointed to act as agent for the Ontario Wheat Producers' Marketing Board where the wheat is being carried from the agent's premises in a commercial vehicle registered in the agent's name;
- (f) ready mixed concrete;
- (g) 24 1 — primary forest or raw wood materials that are the products of the forest from which they are being carried;
- (h) goods carried by an operator of a commercial vehicle if the goods have been sold, bought, produced, transformed or repaired by, or have been lent, borrowed, given or leased by, the operator as an integral part of the operator's primary business which business is not the operation of public trucks;
- (i) goods in a bus being operated under the authority of an operating licence issued under the *Public Vehicles Act*; or
- (j) goods in a commercial vehicle on or before the 1st day of January, 1989, where the carriage would have been exempt under the *Public Commercial Vehicles Act*.

R.S.O. 1980,
c. 425

R.S.O. 1980,
c. 407

(5) Subsection (1) does not apply to a holder of a certificate of intercorporate exemption or any affiliated corporation named in the certificate carrying goods owned by any of them pursuant to the certificate.

Idem.
certificate of
intercorporate
exemption

Idem,
trip permit

(6) Subsection (1) does not apply to the holder of a trip permit operating the commercial vehicle specified therein in accordance with the permit.

Transportation
for
compensation

(7) Where goods are carried in a commercial vehicle that is not owned by the owner of the goods and compensation is received for the use of the vehicle other than in accordance with a lease of the vehicle, the goods shall be deemed to be carried for compensation.

Idem

(8) Where goods are carried in a commercial vehicle that is leased by the owner of the goods but the lessor of the vehicle, directly or indirectly,

- (a) engages or pays the driver of the vehicle;
- (b) exercises control over the driver of the vehicle in the course of his employment as driver; or
- (c) assumes responsibility for the goods,

the goods shall be deemed to be carried for compensation.

Definition,
lease

(9) For the purpose of this section, "lease" means a written agreement setting out fully and accurately all provisions under which the vehicle is leased and giving the lessee exclusive possession and control over the vehicle throughout the entire term of the agreement.

Offence

(10) Every person who contravenes subsection (1) is guilty of an offence and,

- (a) on the first conviction, is liable to a fine of not less than \$250 and not more than \$5,000; and
- (b) on each subsequent conviction, is liable to a fine of not less than \$500 and not more than \$5,000.

Idem

(11) For the purposes of subsection (10), a conviction that occurs more than five years after a previous conviction is not a subsequent conviction.

Minister to
issue licences

4.—(1) Operating licences shall be issued by the Minister in accordance with this Act and the regulations.

Special
licences

(2) The Minister may issue an operating licence containing a class of operating authority that is,

- (a) a single-source authority authorizing the licensee to provide,

- (i) commercial vehicles of which the licensee is the owner or lessee, and
 - (ii) drivers for the vehicles referred to in sub-clause (i),
 - under one or more contracts; or
 - (b) an owner-driver authority authorizing the licensee to provide,
 - (i) one commercial vehicle of which the licensee is the owner or lessee, and
 - (ii) a driver for the vehicle referred to in sub-clause (i),
- under one contract at any given time.

(3) No person shall hold,

Limit on
authorities

- (a) more than one owner-driver authority at the same time; or
- (b) an owner-driver authority and a single-source authority other than a single-source authority granted under section 8.

(4) The Minister, where it is in the public interest to do so, may grant a special authority to any licensee which, for the purpose of subsection 3 (1), shall be deemed to be part of that licensee's operating licence, subject to the conditions set out in the special authority, for seven days or such shorter time as is set out in the special authority.

Special
authority

(5) When granting an operating authority, the Minister may make the authority subject to such provisions and limitations as the Minister considers in the public interest, and, when there has been a public interest test hearing conducted by the Board, the Minister shall make the authority subject to such provisions and limitations as are recommended by the Board.

Subject to
limitations

(6) Provisions or limitations imposed under subsection (5) shall not serve to limit the number of commercial vehicles operated under an operating authority except where the authority is,

Exception

- (a) a single-source authority;
- (b) an owner-driver authority;

(c) granted after a hearing conducting a public interest test; or

(d) for the carriage of road construction materials,

and shall not be inconsistent with any provision in this Act or the regulations.

Vehicle
certificates
limiting
number of
vehicles

(7) The Minister,

(a) when granting an operating authority limiting the number of vehicles that may be operated under the authority; or

(b) with respect to the holder of an operating authority for carriage of road construction materials issued under the *Public Commercial Vehicles Act*,

R.S.O. 1980,
c. 407

shall issue vehicle certificates in a number not exceeding the number of vehicles permitted to be operated under the authority.

Limit on
vehicles
under
contract

(8) No holder of a single-source authority or an owner-driver authority shall have more commercial vehicles under contract at any time than the number of vehicle certificates held under the authority.

Vehicle
certificate

(9) A vehicle certificate shall state the relevant operating authority.

Expiry

(10) An operating licence may be issued to expire,

(a) at the end of a specified term;

(b) upon a specified day; or

(c) upon the occurrence of a specified event.

Idem

(11) Where the holder of an operating licence fails to file a return or statement required to be filed by the regulations, the licence expires on the day the return or statement was to be filed notwithstanding that a different day may be shown on or indicated by the licence.

Notice of
change

(12) Where the name or address of a holder of an operating licence changes from that set out in the application for the licence or a previous notice of change, the holder shall file, with the Minister, a notice of the change within fifteen days after the change.

(13) Every licensee who does not maintain a place of business in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this Act and to accept service for and on behalf of the licensee.

Ontario agent

(14) For the purpose of subsection (2), a “contract” means a contract, for a period of at least thirty consecutive days, that gives the licensee the right to carry goods of the other party to the contract, which goods are under the control of the other party, and prohibits the licensee from using the vehicle specified in the contract from carrying goods on the licensee’s behalf or for a person who is not the other party to the contract.

Definition, contract

5.—(1) Operating licences and operating authorities are not transferable.

Licence not transferable

(2) Where a licensee, who is an individual, dies, the executor or administrator of the estate of the deceased may carry on the business of the deceased in accordance with the operating licence for not more than six months after the death.

Death

(3) The directors of a corporate licensee shall report forthwith to the Minister,

Change in control of corporation

(a) every issue or transfer of shares of its capital stock or change in beneficial ownership thereof; or

(b) an amalgamation,

that may affect control of the operations of the corporation.

(4) Every licensee shall report to the Minister any arrangement whereby any part of the transportation service authorized is controlled in any way by a person other than the licensee.

Where licensee does not control business

(5) The report referred to in subsection (4) is not required where the arrangement is a contract of the nature referred to in subsection 4 (2).

Exception to subs.(4)

6.—(1) An operating licence shall not be issued or an operating authority granted unless the applicant demonstrates fitness to carry on the business of carrying goods for compensation as described in the application for the licence.

Requirements for licence

(2) An operating licence shall not be issued to an applicant who does not hold a certificate of competency or whose application is not co-signed by an employee who holds such a certificate.

Idem

Corridor
licence

(3) Notwithstanding subsections (1) and (2), every applicant for an operating licence who is authorized to operate a commercial vehicle to carry goods of another person for compensation in a jurisdiction other than Ontario is entitled to an operating licence that permits the licensee to carry goods through Ontario provided the goods are not picked up or dropped off in Ontario.

Idem

(4) Every applicant for an operating licence, except an applicant for a licence under subsection (3), shall file with the Minister, with respect to the business for which authority is sought, a description of the proposed transportation service and evidence that the applicant,

(a) is not an undischarged bankrupt;

(b) is insurable; and

R.S.O. 1980,
c. 198

(c) holds a Commercial Vehicle Operator's Registration Certificate issued under the *Highway Traffic Act* that is not under suspension or subject to a fleet limitation.

Matters to
be considered

(5) In determining the fitness of an applicant, the Minister shall consider,

(a) the past conduct of the applicant or, where the applicant is a corporation, of its officers and directors, including the applicant's safety, financial integrity and customer service record and record of convictions available to the Minister under this Act and the *Highway Traffic Act*, *Public Commercial Vehicles Act*, *Motor Vehicle Transport Act* (Canada), *Compulsory Automobile Insurance Act*, *Environmental Protection Act*, *Employment Standards Act*, *Fuel Tax Act*, 1981, *Dangerous Goods Transportation Act*, 1981, *Criminal Code* (Canada), *Canada Labour Code*, *Transportation of Dangerous Goods Act* (Canada), and the regulations thereunder and such other statutes as may be prescribed, and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and

R.S.O. 1980,
cc. 198, 407,
83, 141, 137

1981, cc. 59,
69

R.S.C. 1970,
cc. M-14,
C-34, L-1

(b) such other matters as are prescribed.

Exception
to subs.(2)

(6) Subsection (2) does not apply where the application is for a licence to carry goods of a nature and on a scale that had

been exempt under the *Public Commercial Vehicles Act* and the applicant was engaged in that transportation during the six months immediately preceding the 1st day of July, 1987.

R.S.O. 1980,
c. 407

7.—(1) On being satisfied of the fitness of an applicant to hold a licence, the Minister shall give thirty days notice of the intention to issue an operating licence to the applicant by publication in *The Ontario Gazette*.

Notice of
intention to
issue licence

(2) Subsection (1) does not apply to an operating licence restricted to an operating authority issued under subsection 6 (3) (corridor licence).

Exception

(3) Any person may, within the thirty-day period referred to in subsection (1), file with the Minister a written request that,

Hearing

(a) where there is an allegation that false information was given to the Minister by the applicant, the Minister hold a hearing to determine the fitness of an applicant; or

(b) the Board hold a hearing to conduct a public interest test.

(4) Where a request is made under clause (3) (a) that the Minister, in his or her absolute discretion, does not consider merely frivolous or vexatious, the Minister shall hold the hearing requested, which hearing shall be limited to the allegation that false information was given.

Idem

(5) Where the Minister finds, after a hearing under subsection (4), that false information was given, the Minister shall reassess the question of the applicant's fitness to hold a licence.

Reassessing
fitness

(6) Where subsection (7) does not apply and no request is made under clause (3) (b), and the Minister continues to be satisfied that the applicant is fit to hold the licence, the Minister shall issue the licence applied for.

Issue of
licence

(7) The Minister may direct the Board to hold a public interest test and, where the Minister so directs, the Board shall hold the hearing.

At Minister's
direction

(8) Where a request is made under clause (3) (b), the Board shall, subject to section 9, hold the hearing requested.

Idem,
by Board

Determine
fitness first

(9) A hearing to conduct a public interest test shall not be held until a final determination has been made that the fitness of the applicant has been demonstrated.

Exception

(10) The requirement to hold a hearing to conduct a public interest test does not apply where the application is for an owner-driver authority or an operating authority to carry,

(a) waste or scrap being 40 29 — miscellaneous waste or scrap; or

(b) farm products being 01 1 — field crops, 01 2 — fresh fruits or tree nuts, 01 3 — fresh vegetables, 01 91 — horticultural specialities and 01 99 — farm products, not elsewhere classified in STCC.

Idem

R.S.O. 1980,
c. 407

(11) The requirement to hold a hearing to conduct a public interest test does not apply where the applicant holds an operating licence issued under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 and the authority applied for does not exceed that which would be contained in that licence if it had been issued pursuant to a rewritten certificate under section 10b of the *Public Commercial Vehicles Act*.

Stay of
licence

(12) Where a request for a hearing is made in respect of an application, the operating authority applied for shall not be granted until the hearing is completed or there has been a final disposition of the rejection of the request.

Application
of cl. (3) (b)
and subs. (7)

(13) Clause (3) (b) and subsection (7) cease to apply five years after coming into force.

Temporary
licence

8. Where the Minister is satisfied that the circumstances warrant it and that it is in the public interest to do so, the Minister may, notwithstanding subsections 6 (1) and 7 (12), issue an operating licence or grant an operating authority that is valid for not more than twelve months.

Public
interest
test

9.—(1) A hearing to conduct a public interest test pursuant to a request under clause 7 (3) (b) shall be held only where the person who asked for the test makes out a written case to the Board that the granting of the operating authority applied for will have a significant detrimental effect on the public interest.

Idem

(2) A hearing to conduct a public interest test pursuant to the direction of the Minister shall be held only after the Minister has published, in *The Ontario Gazette*, the reasons for wanting the hearing.

(3) In a hearing where a public interest test is conducted, the burden of proof is, Burden of proof

- (a) where the hearing is initiated by the Minister, on the applicant for the operating authority; or
- (b) where the hearing is as a result of a request under clause 7 (3) (b), on the person making the request.

(4) Before holding a hearing under this section, the Board shall give the Minister fifteen days notice thereof. Notice to Minister

(5) If the Minister is of the opinion that the subject-matter of a hearing of which the Minister receives notice is or is likely to be a matter of provincial interest, the Minister shall so advise the Board in writing together with the reasons before the day fixed by the Board for the hearing and, where that is done, may direct the Board, Provincial interest

- (a) to postpone the hearing until thirty days after the day fixed; or
- (b) to examine and investigate such matters relating to transportation policy as are referred to it by the Minister, to report thereon to the Minister and to postpone the hearing until thirty days after the date of the report.

(6) The Board, where it holds a hearing after it has been advised that the provincial interest may be involved, shall, as part of that hearing, consider and give effect to every policy statement issued by the Lieutenant Governor in Council related to the provincial interest identified. Policy statements

(7) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements as required under subsection (6), the Lieutenant Governor in Council may give notice thereof with particulars to the Board within thirty days after the date of the decision of the Board and the Board shall review its decision and may amend its decision. Review of decision

(8) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements in a review, the Lieutenant Governor in Council may give notice thereof to the Board within thirty days after the review and may substitute the decision of the Lieutenant Governor in Council for all or any part of the decision of the Board. Substituting decision

Matters
considered
in public
interest test

10.—(1) In a hearing to conduct a public interest test, the Board shall determine whether granting the operating authority applied for, as set out in the material filed under subsection 6 (4), would have a significant detrimental effect on the public interest in relation to the market proposed to be served by investigating whether there would be significant adverse impact on the following:

1. The existence of a dependable and viable trucking industry.
2. The availability of appropriate trucking services to shippers.
3. The ultimate Ontario consumers of goods and services.
4. Overall or net effect on employment within Ontario and the gross provincial product.
5. The public interest as set out by the Lieutenant Governor in Council in policy statements issued under section 36.

Board
report

(2) Where, after a hearing to conduct a public interest test, the Board finds that granting the operating authority applied for, subject to any limitations or variations recommended by the Board, will not have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Minister and recommend that the Minister,

- (a) grant the authority applied for;
- (b) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or
- (c) where the issue of provincial interest has been raised under subsection 9 (5), issue an operating licence with provisions that vary from those applied for.

Issuing
licence

(3) Upon receiving a report under subsection (2), the Minister shall issue a licence in the terms recommended by the Board.

(4) The issue of any licence under subsection (3) may be delayed for up to six months after the Board's decision if the Board so recommends. Deferred issuance

11.—(1) The Minister shall issue a certificate of intercorporate exemption to every applicant therefor who is not precluded from receiving it by subsection (2). Certificate of intercorporate exemption

(2) A certificate of intercorporate exemption shall not be issued, Where not to be issued

(a) to a licensee; or

(b) to a corporation that does not show on the application an affiliated corporation,

and shall not name therein an affiliated corporation that holds an operating licence.

(3) The Minister may, in a certificate of intercorporate exemption, set out such conditions and limitations as the Minister sees fit to govern the carriage of goods under the certificate. Conditions in certificate

(4) For the purpose of this Act, a corporation is an affiliate of another corporation if one of them is the subsidiary of the other, if both are subsidiaries of the same corporation or if each is controlled by the same individual or corporation. Affiliate

(5) For the purpose of subsection (4), a corporation is controlled by an individual corporation or group of corporations if, Control

(a) voting securities of the corporation carrying more than 90 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons;

(b) the votes carried by the securities referred to in clause (a) are entitled, if exercised, to elect all members of the board of directors of the corporation.

(6) For the purpose of subsection (4), a corporation is a subsidiary of another corporation if, Subsidiary

(a) it is controlled by,

(i) the other corporation,

(ii) the other corporation and one or more corporations each of which is controlled by that other corporation, or

(iii) two or more corporations each of which is controlled by the other corporation; or

(b) it is a subsidiary of a corporation that is the other corporation's subsidiary.

Notification
of change —
re intercor-
porate
exemption

12.—(1) Every holder of a certificate of intercorporate exemption shall notify the Minister of any change in the facts set out in the certificate within thirty days after the change.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$5,000.

Trip
permit

13.—(1) Subject to subsection (3), the Minister shall issue a trip permit to every applicant therefor.

Idem

(2) Every trip permit shall,

(a) specify the trip and vehicle, including drawn vehicles if any, for which it applies; and

(b) be subject to the conditions set out therein.

Limit of
three permits

(3) No more than three trip permits may be issued to one person within any twelve-month period.

Commercial
zones

14.—(1) The Minister may designate commercial zones and may vary the boundaries of a commercial zone but, where the Minister does so, it shall be done only in accordance with the recommendations of the Board.

Referral
to Board

(2) Where the Minister proposes to designate a commercial zone or to vary the boundaries of a commercial zone, he shall refer the proposal to the Board and the Board shall hold a public hearing and report thereon to the Minister with its recommendations.

Second
hearing

(3) The Minister may require the Board to hold a second public hearing in respect of all or any part of a proposal that has been reported on under subsection (2) and to again report thereon to the Minister with its recommendations.

Matter for
the Board
to consider

(4) In determining whether to recommend the designation of a commercial zone, the Board shall consider whether the public interest will be served thereby.

(5) In considering public interest, the Board shall take into account the impact on the users of for hire transportation services within the proposed zone and on the providers of the services.

Public
interest

(6) In considering the impact on the providers of services, the Board shall take into account the impact on those to whom this Act does not apply, who are operating exclusively within the proposed zone and on licensees who would be affected thereby.

Idem

15.—(1) No person shall knowingly hire, directly or indirectly, or participate in an arrangement to hire a person to carry goods where the services would be carried out in contravention of subsection 3 (1).

Prohibited
service —
arranging

(2) No person shall,

Prohibited
service —
performing

(a) hold himself out as willing to; or

(b) undertake to,

arrange to carry goods where the service would be carried out in contravention of subsection 3 (1).

16.—(1) No licensee shall carry goods under the authority of an operating licence unless the licensee or an employee of the licensee holds a certificate of competency and, where the regulations so require, such greater number of employees as are indicated by the regulations hold a certificate of competency.

Certificate
of
competency
required

(2) In every situation where the regulations require more than one certificate holder, the licensee is permitted ninety days in which to effect compliance.

Delayed
effect

(3) Every licensee, who ceases to meet the requirements referred to in subsection (1) because of the termination of employment of an employee who holds a certificate of competency, shall be deemed to meet the requirements for ninety days after the termination.

Idem

(4) An employee holding a certificate of competency may be counted for one licensee only when determining whether the requirements of subsection (1) are met except where the licensees are affiliated corporations.

Limited use
of certificate

(5) Every licensee shall notify the Minister within fifteen days after a change in certificate holders whose employment is

Change in
certificate
holders

relied on to satisfy the requirements of subsection (1) of the change.

Exception

(6) Subsection (1) does not apply to an executor or administrator of an estate carrying on business in accordance with subsection 5 (2).

Idem

(7) Every licensee who holds an operating licence issued,

R.S.O. 1980,
c. 407

(a) under section 10b of the *Public Commercial Vehicles Act*;

(b) under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 in respect of goods to be transported before the 1st day of January, 1989; or

(c) under subsection 6 (3) (corridor licence),

is exempt from the application of subsection (1).

Idem

R.S.O. 1980,
c. 407

(8) Every licensee whose authority is limited to the carriage of goods that were exempt under the *Public Commercial Vehicles Act* or to the carriage between points that were within an urban zone under that Act is exempt from the application of subsection (1).

Licence to
be carried

17.—(1) Every person driving a public truck on a highway shall carry or keep, in a readily accessible place in the vehicle, a copy of the operating licence under which the vehicle is being operated and shall surrender the copy for inspection upon the demand of an officer.

Certificate of
intercorporate
exemption to
be carried

(2) Every driver of a commercial vehicle that is being operated under a certificate of intercorporate exemption shall carry or keep in a readily accessible place in the vehicle,

(a) the certificate or a copy thereof; and

(b) a shipping document signed by the consignor of the goods carried showing the name of the consignor, the name and address of the consignee, the originating point and the destination of the shipment and the particulars of the goods comprising the shipment,

and shall surrender them for inspection on the demand of an officer.

Copy of
lease to be
carried

(3) Every driver of a commercial vehicle that is under lease or contract to the owner, consignor or consignee of the goods

being carried shall carry at all times while carrying the goods on a highway a copy of the lease, contract or notice of contract and shall surrender it for inspection on the demand of an officer.

(4) Every driver of a commercial vehicle that is being operated under the authority of a trip permit shall carry or keep the permit in a readily accessible place in the vehicle and shall surrender it for inspection on the demand of an officer.

Trip permit
to be
carried

(5) Every person operating a public truck under an operating authority that limits the number of commercial vehicles that may be operated thereunder shall carry in the vehicle a vehicle certificate issued pursuant to such operating authority and shall surrender it for inspection on the demand of an officer.

Where limit
on number
of vehicles

18.—(1) Except as otherwise provided in the regulations, every licensee shall publish, as prescribed, a tariff of tolls showing the rates and charges and the conditions of carriage for the carrying of goods to and from points in respect of which the carriage is provided or offered by the licensee.

Publishing
tariffs

(2) No licensee shall charge a toll other than that contained in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff.

Tolls

(3) Subsection (2) does not apply to a licensee who charges the toll under a contract, of which there is written evidence, that is for a term,

Exception

(a) of less than fourteen days;

(b) of not less than six months and that provides for an ascertainable maximum quantity of goods to be transported at that toll; or

(c) other than as set out in clause (a) or (b) but has been approved by the Board.

(4) A tariff of tolls shall not come into effect until fifteen days after it has been published in the prescribed manner or, where the Board has waived the fifteen days notice, until it has been published in the prescribed manner.

Coming
into effect

(5) The Board, on the application of a licensee, may, in any particular situation, reduce or waive the fifteen days notice referred to in subsection (4) or approve the term of a contract for purposes of clause (3) (c).

Power of
Board

Bill of
lading

19.—(1) Except as otherwise provided in the regulations, every licensee shall issue a bill of lading to the person delivering or releasing goods to the licensee for carriage for compensation.

Copy to be
retained

(2) A signed copy of every bill of lading issued under this Act shall be retained, as, where and for the time prescribed, by the consignor of the goods involved and by the issuer.

Production
of bill
of lading

(3) Except as otherwise provided in the regulations, every driver operating a public truck shall carry a copy of the bill of lading in respect of the goods being carried and shall surrender it for inspection on the demand of an officer.

Copy of bill
of lading to
accompany
all goods

(4) Where a shipment of goods is carried on more than one vehicle, the licensee shall ensure that every part of the shipment is accompanied by a copy of the appropriate bill of lading.

Way bill

(5) For the purpose of subsections (3) and (4), a way bill, containing such information as is prescribed, may be substituted for the bill of lading.

Exemption
certificate

(6) The Minister may grant a bill of lading exemption in an operating authority to a licensee if the operating authority is within a prescribed class.

Idem

(7) Subsections (3) and (4) do not apply in situations where there is no bill of lading or way bill because its use is obviated through the existence of an exemption granted under this section.

Access to
records

(8) Every person to whom a bill of lading exemption has been granted under subsection (6) shall make available to an officer of the Ministry, upon demand, access to the holder's records, whether in printed form or on film or the access is by electronic means or otherwise, and shall assist the officer in examining and extracting therefrom information that would, except for the exemption, be required to have been contained in a bill of lading or way bill.

Insurance

20. Every licensee shall carry such insurance or provide such bond as is prescribed and shall ensure evidence thereof is carried in every commercial vehicle operated by the licensee.

Direction
to stop

21. Any officer may, for the purpose of an examination, direct, by signals or otherwise, the driver of any commercial vehicle driven on a highway to stop, and the driver upon being so directed shall stop the vehicle.

22.—(1) Any officer may, at any time, examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the *Highway Traffic Act* and the regulations under either Act are being complied with and the person in control of the vehicle shall assist in the examination of it, its contents and equipment.

Examination
by officer

R.S.O. 1980,
c. 198

(2) Where a commercial vehicle examined under this section contains goods, the officer conducting the examination may require the person in charge of the vehicle to surrender all documents in the possession of that person or in the vehicle relating to the operation of the vehicle and to the carriage and ownership of the goods and to furnish all information within that person's knowledge relating to the details of the current trip and the ownership of the goods.

Surrender
of documents

(3) Where an officer is of the opinion, on reasonable and probable grounds, that a commercial vehicle is being operated in contravention of subsection 3 (1), the officer may,

Seizure or
detention

(a) direct the driver of the vehicle to drive the vehicle to such location as is reasonable in the circumstances and detain it at that location; and

(b) seize the permits and number plates for the vehicle,

until the vehicle is able to be operated in compliance with subsection 3 (1).

(4) Every driver who is directed under clause (3) (a) shall comply with the direction.

Duty on
driver

(5) Every permit seized under subsection (3) shall be deemed to be under suspension for the purposes of section 33 of the *Highway Traffic Act* while it is in the custody of the officer seizing it.

Permit
suspension

R.S.O. 1980,
c. 198

(6) Where permits and number plates have been seized or a commercial vehicle has been detained under subsection (3), the person entitled to possession of the vehicle may apply to the District Court for an order that the permits and plates be returned or the vehicle released, as the case may be, and upon a security being deposited with the Court in such amount not to exceed \$5,000, as determined by the Court, the order may be issued.

Order to
release

(7) Every security deposited under subsection (6) shall be held until the final disposition of a charge laid in respect of the believed contravention that led to the seizure or detention or, where a charge is not laid within six months after the

Disposition
of security

seizure or detention, the expiration of the six-month period, whichever first occurs.

Idem (8) Where there is a conviction in respect of a charge referred to in subsection (7), the security deposited shall be applied to pay the fine imposed.

Lien (9) All costs necessarily incurred in detaining and storing a vehicle under subsection (3) are a lien on the vehicle.

Examination of records **23.** An officer of the Ministry may examine all books, records and documents of,

(a) a licensee or a holder of a trip permit relating to the business of operating public trucks; or

(b) a holder of a certificate of intercorporate exemption or of an affiliated corporation named in the certificate relating to the transportation of goods for compensation,

for the purpose of ensuring that the provisions of this Act and the regulations are being complied with and the officer may, for the purpose of the examination, upon producing his or her designation as an officer of the Ministry, enter at any reasonable time the business premises of the licensee, holder or affiliated corporation, as the case may be.

Investigation **24.—**(1) Where the Minister believes, on reasonable and probable grounds, that any person has contravened a provision of this Act or the regulations, the Minister may appoint one or more persons to investigate whether the contravention has occurred and the person appointed shall report the results of the investigation to the Minister.

Powers of investigator (2) For purposes relevant to an investigation under this section, the investigator may inquire into and examine the business affairs of the person in respect of whom the investigation is being made and may,

(a) upon production of his or her appointment, enter, at any reasonable time, the business premises of the person and examine books, papers, documents and things relevant to the investigation; and

(b) inquire into negotiations and transactions made by or on behalf of or in relation to the person relating to the transportation of goods or the use of public trucks or that are otherwise relevant to the investigation,

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

(3) No person shall obstruct an investigator in the course of an investigation under this section or withhold from an investigator or conceal or destroy any books, papers, documents or things relevant to the investigation.

No person
shall obstruct
investigator

(4) Where a justice of the peace is satisfied, upon an application without notice by an investigator acting under this section,

Application
to justice of
the peace

- (a) that the investigation has been ordered and that the applicant has been appointed to conduct it; and
- (b) that there are reasonable grounds for believing there are in a specified building, dwelling, receptacle or place, books, papers, documents or things relating to the investigation,

the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the investigator, together with such police officers as the investigator calls upon to assist, to enter and search, if necessary by reasonable force, the building, dwelling, receptacle or place for the books, papers, documents or things and to examine them.

(5) Every entry and search authorized under subsection (4) shall be made between sunrise and sunset unless the order authorizes the investigator to make the search at night.

Times
of entry

(6) The Minister may appoint an expert to assist in examining books, papers, documents or things examined under clause (2) (a) or subsection (4).

Expert
examination

25.—(1) Any person,

Copies

- (a) obtaining a document under section 22, may take the document for the purpose of making a copy of it; or
- (b) in the course of an investigation under section 23 or 24, upon giving a receipt therefor, may take anything that may be examined under that section for the purpose of making copies thereof,

but the copying shall be done as quickly as reasonably possible and the thing copied shall be promptly returned thereafter.

Idem

(2) Any copy made as provided in subsection (1) and certified to be a true copy by the person making the copy is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and that the facts set out therein are true.

Cancellation
or
amendment
of certificate

26.—(1) The Minister may amend a certificate of intercorporate exemption where a corporation named in the certificate is no longer affiliated to the holder of the certificate or, where the corporation named in the certificate is the only one so named and is no longer affiliated to the holder of the certificate, the Minister may cancel the certificate.

Minister may
suspend or
cancel
certificate

R.S.O. 1980,
c. 198

(2) The Minister may suspend or cancel a certificate of intercorporate exemption where the holder thereof or any person under the control or direction of the holder or of an affiliated corporation named therein contravenes this Act or the regulations, the *Highway Traffic Act* or the regulations thereunder or the provisions of the certificate, and the contravention is such that there are grounds for believing that transportation services permitted by the certificate will not be carried on in accordance with the law.

Cancellation
of licence

27.—(1) The Minister may cancel an operating licence,

- (a) in whole, where the licensee fails to provide any part of the transportation service for which the licensee is licensed for a continuous period of one year;
- (b) in part, where the licensee fails to provide transportation service in respect of that part for a continuous period of one year; or
- (c) in whole or in part at the request of the licensee.

Suspension
or
cancellation
of licence

(2) The Minister may suspend or cancel an operating licence in whole or in part where,

- (a) the licensee or any person under the control or direction of the licensee contravenes this Act or the regulations, any Act referred to in clause 6 (5) (b) or the provisions of the licence and the contravention is such that there are reasonable grounds for believing that the transportation services permitted

by the licence will not be carried on in accordance with this Act or the regulations;

- (b) there has been misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service;
-
- (c) the licensee is financially incapable of providing transportation services in accordance with this Act and the regulations or the provisions of the licence or of meeting the licensee's financial responsibilities to users of the services; or
- (d) the licensee holds an owner-driver or single-source authority and has been a party to a contract under the authority that has been cancelled in less than thirty days in circumstances that afford reasonable grounds for believing that the transportation service authorized by the authority will not be carried on in accordance with this Act and the regulations.

(3) The Minister may cancel a bill of lading exemption of any holder of an operating licence who does not comply with subsection 19 (8) (access to records) or whose records do not disclose the information that is required in a bill of lading or way bill.

Cancellation
of bill of
lading
exemption
certificate

28.—(1) Where the Minister proposes to suspend or cancel an operating licence, in whole or in part, to suspend, amend or cancel a certificate of intercorporate exemption or to cancel a bill of lading exemption, the Minister shall serve notice of the proposal together with reasons therefor on the licensee or certificate holder.

Notice of
proposal to
cancel, etc.

(2) Every person who is served with a notice under subsection (1) and serves on the Minister and the Board, within fifteen days after that person receives service of the notice, a request for a hearing, is entitled to a hearing by the Board in respect of the proposal.

Right to
hearing

(3) Where the Minister does not receive a request for a hearing as provided in subsection (2), the Minister may, on the expiration of the fifteen days referred to in subsection (2), carry out the proposal.

Where no
hearing
requested

(4) For the purpose of subsection (1), a notice that is mailed by prepaid post to the licensee or certificate holder at that person's address last known to the Minister shall be deemed to have been served on the third day after the day of mailing.

Service

Extension
of time

(5) The Board, on application by a licensee or certificate holder, as the case may be, may extend the time for requesting a hearing, either before or after expiration of the fifteen-day period, and may give such directions as it considers proper consequent upon the extension.

Parties

(6) The Minister, the licensee or certificate holder and such other persons as the Board may specify are parties to every hearing under this section.

Efforts
to comply

(7) In a hearing held under this section, the Board shall take into account, where appropriate, evidence as to the manner in which the licensee has carried on operations under the licence after receipt of notice of hearing and up to the hearing.

Opportunity
to examine
evidence

(8) The Minister shall give any party to a hearing an opportunity to examine, before the hearing, all documentary evidence that will be introduced and all reports, the contents of which, will be given in evidence at the hearing.

Recommendations
of Board

(9) The Board shall, after a hearing under this section, make a report to the Minister, setting out its findings of fact, conclusions of law and recommendations.

Decision
subsequent
to report

(10) The Minister, on receiving and considering a report made under this section, may carry out the proposal to which it relates, fully or in a modified manner and, where he does so, shall give written reasons for the decision to the licensee or holder or, where the Minister decides not to carry out the proposal, he shall so advise the licensee or certificate holder.

Referral
to Board
where
uncertainty

29.—(1) The Minister may at any time refer an operating licence to the Board where, in the opinion of the Minister, any part is ambiguous or the rights granted by the licence are uncertain and the Board shall, after a hearing, report to the Minister and may recommend that the licence be amended to resolve any ambiguity or uncertainty.

Issue of
clarified
licence

(2) Upon receipt of a report under subsection (1) that recommends a licence be amended, the Minister shall issue an amended operating licence in the form recommended by the Board.

Confidentiality

30. Every person employed in the administration of this Act, including an investigator under section 24, shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of that person's duties or employment and shall not communicate any such matter to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations or of the *Motor Vehicle Transport Act* (Canada);
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

R.S.C. 1970,
c. M-14

31. Where the Minister receives a report under subsection 5 (3) or (4) or information that leads the Minister to conclude that a report should have been made under subsection 5 (3) or (4), the Minister shall refer the report or the information to the Board and the Board shall hold a hearing to determine whether persons different from those indicated at the time of the application for the licence are in actual control of the transportation service authorized by the licence and, where that is the case, the Minister shall cancel the operating licence.

Cancellation
of licence
by Board

32.—(1) Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1,500.

Penalty

(2) Every person who knowingly makes a false statement in an application, declaration, affidavit or document required under this Act or the regulations or by the Board is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Idem

33. Any licensee may be charged with and convicted of an offence under this Act or the regulations for which the driver of the licensee's public truck is subject to be charged and on conviction, the licensee is liable to the penalty provided for the offence.

Licensee
vicariously
liable

34. No prosecution shall be instituted under this Act without the prior consent of an officer.

Consent to
prosecute

35.—(1) There shall be a committee to be known as the Advisory Committee on Truck Transportation composed of not fewer than twelve and not more than twenty members.

Advisory
Committee
on Truck
Transportation

(2) The Minister shall appoint the members of the Committee for such terms as the Minister determines and in making

Members

the appointments shall include representatives of the Ministry, the Board, shippers and carriers.

Chairman
and
vice-chairman (3) The Minister shall designate a chairman and a vice-chairman from among the members appointed.

Vacancies (4) The Minister may fill any vacancy that occurs in the membership of the Committee.

Function of
Committee (5) The function of the Committee is to advise and make recommendations to the Minister on,

(a) the effectiveness of this Act and its administration by the Ministry and the Board in relation to the objectives set out in section 2;

(b) any matter concerning the transportation of goods in commercial vehicles; and

(c) the degree to which the public interest test is necessary to advance the objectives of section 2.

Policy
statements **36.**—(1) The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate.

Publication (2) Every policy statement made under subsection (1) shall be published in *The Ontario Gazette*.

Ministerial
directions to
investigate **37.**—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as the Minister specifies and the Board shall report thereon to the Minister.

Hearings (2) For the purposes of subsection (1), the Board may hold such hearings as it considers necessary.

Non-appli-
cation
of R.S.O.
1980,
c. 338 **38.** Section 22 of the *Ontario Highway Transport Board Act* does not apply to an order or decision of the Board under this Act.

One valid
licence only
R.S.O. 1980,
c. 407 **39.**—(1) Every operating licence issued to a licensee under the *Public Commercial Vehicles Act* or this Act is cancelled upon the issuance of a new licence under this Act to the same licensee.

Amending
licence (2) An amended licence constitutes a new licence, as amended, for the purpose of subsection (1).

40.—(1) The Lieutenant Governor in Council may make Regulations regulations,

1. prescribing classes of licences, licensees and authorities;
2. prescribing fees and the basis for computing fees and providing for the payment thereof;
3. prescribing conditions and limitations to which licences, authorities, permits and certificates of incorporate exemptions shall be subject;
4. prescribing the contents of and the information to be contained in bills of lading;
5. prescribing the form, amount, nature, class, provisions and conditions of insurance policies and bonds that shall be provided and carried by licensees;
6. respecting the form and content of tariffs and tolls, including conditions of carriage, the publication thereof and the payment of tolls;
7. prescribing forms, including the contents thereof and information to be contained therein, and providing for their use and the filing thereof;
8. prescribing, regulating and limiting the hours of labour of drivers of public trucks;
9. prescribing the qualifications of drivers of public trucks and prohibiting persons who do not meet the qualifications from driving public trucks;
10. prescribing equipment to be carried by public trucks and the condition and location in which the equipment shall be kept;
11. prescribing the method of bookkeeping or accounting to be used and the returns or statements to be filed by licensees and providing for the filing thereof;
12. prescribing criteria to be taken into account in determining the fitness of applicants for operating authorities and licences;
13. prescribing and providing for the information to be marked on articles covered by a bill of lading issued

by licensees and exempting any class of licensees from any provision so prescribed or provided;

14. prescribing conditions that shall be deemed to be a part of every contract or a class of contract for the carriage of goods for compensation to which this Act applies;
15. exempting any class of licensees or drivers of any class of public truck from the application of sections 18 and 19 and prescribing conditions to which any exemption is subject;
16. prescribing classes of operating authorities for the purposes of subsection 19 (6) and conditions that apply to holders of operating authorities who carry goods under a bill of lading exemption;
17. governing the issue and renewal of operating licences;
18. prescribing the qualifications of applicants for and holders of operating authorities and operating licences;
19. governing the issue and renewal of certificates of intercorporate exemption and prescribing terms to which the certificates shall be subject;
20. establishing certificate of competency training programs including the prescribing of training courses, courses of study, methods of training, qualifications for certification, fixing credits to be allowed for courses, the administration of the program, providing for the granting of certificates and the recognition of previous experience;
21. prescribing classes of public trucking undertakings and the number, location and scope of duties of holders of certificates of competency required to be employed therein;
22. prescribing the contents of documents and financial statements and providing for their filing with the Minister or the Board;
23. prescribing the period of time for which certificates of intercorporate exemption are valid and providing for the renewal thereof;

24. prescribing the method of determining the number of employees required to hold a certificate of competency and providing for different calculations based on the type of venture carried on;
25. designating certificates or documents that shall, on designation, be deemed to be a certificate of competency issued under this Act;
26. respecting any matter or thing that is required or permitted to be prescribed under this Act.

(2) Any regulation may be general or particular in its application. Idem

(3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or specification, and may require compliance with any code, standard or specification that is so adopted. Adoption of codes, etc.

41.—(1) An operating licence issued pursuant to a certificate of public necessity and convenience under section 10b of the *Public Commercial Vehicles Act* shall be deemed to be an operating licence for the purpose of this Act. Transition
R.S.O. 1980,
c. 407

(2) An operating licence issued under the *Public Commercial Vehicles Act*, other than a licence referred to in subsection (1), shall be deemed to be an operating licence for the purpose of this Act until and including the 31st day of December, 1988 unless cancelled sooner by the operation of section 39. Idem

(3) A certificate of intercorporate exemption issued under section 4a of the *Public Commercial Vehicles Act* shall be deemed to be a certificate of intercorporate exemption for the purpose of this Act. Idem

(4) No person shall operate a public truck under an operating licence referred to in subsection (2) unless the vehicle bears a licence plate issued to the operator under the *Public Commercial Vehicles Act*. Limitation

(5) Subsection 6 (1) of the *Public Commercial Vehicles Act* does not apply where the application for the licence is made after the 1st day of July, 1987. Limitation
re R.S.O.
1980, c. 407,
subs. 6 (1)

42.—(1) Section 2, sections 4a and 4b, as enacted by the Statutes of Ontario, 1981, chapter 71, section 3, subsection 6 (3), sections 9, 13, 18 to 22, sections 24 to 26, section 27, as amended by the Statutes of Ontario, 1981, chapter 71, section

10, and sections 27 to 30 of the *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, are repealed.

(2) The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, the *Public Commercial Vehicles Amendment Act, 1981*, being chapter 71, the *Public Commercial Vehicles Amendment Act, 1983*, being chapter 79, the *Public Commercial Vehicles Amendment Act, 1984*, being chapter 20, and subsection 40 (1) of the *Truck Transportation Act, 1987*, being chapter ..., are repealed on the 1st day of January, 1989.

Commence-
ment

43. This Act comes into force on the 1st day of July, 1987.

Short title

44. The short title of this Act is the *Truck Transportation Act, 1987*.

Bill 150

An Act to regulate Truck Transportation

The Hon. E. Fulton

Minister of Transportation and Communications



1st Reading November 19th, 1986
2nd Reading January 21st, 1987
3rd Reading
Royal Assent

(Reprinted as amended by the Resources Development Committee)

EXPLANATORY NOTES

The Bill introduces reform of the regulation of for hire trucking in Ontario. The new Act will replace the *Public Commercial Vehicles Act* and is complemented by the *Highway Traffic Amendment Act, 1987* and the *Ontario Highway Transport Board Amendment Act, 1987*.

The Bill changes the entry test from an examination of the need for additional service to an examination of the fitness of the applicant.

In order to obtain a licence under the new Act, all applicants must pass a fitness test. At the time of the application, the applicant or an employee must hold a Certificate of Competency which will be obtained by passing a written test. This test will cover that prospective truckers have knowledge of safe truck operation, trucking legislation, safety, insurance requirements and maintenance practices. Another factor will be the applicant's past performance record.

For the first five years, the fitness test will be supplemented by a public interest test. This test will take the form of a public hearing and will be used only when any interested party can demonstrate that granting the licence would have significant detrimental effect on the public interest.

The Bill also provides for the establishment of an Advisory Committee on Truck Transportation. The Minister will appoint members of the committee drawing from Government, the OHTB, shippers and carriers. The committee will advise the Minister on the effectiveness of the new Act and, in particular, on the need for continuing the public interest test beyond five years.

Bill 150

1987

An Act to regulate Truck Transportation

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“Board” means the Ontario Highway Transport Board;

“commercial motor vehicle” means a motor vehicle with a permanently attached truck or delivery body and includes a truck tractor used for hauling purposes, but does not

include an ambulance, hearse, casket wagon, fire apparatus, bus or motor vehicle commonly known as a tow truck when the tow truck is being used as a tow truck;

“commercial vehicle” means,

R.S.O. 1980,
c. 198

- (a) a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers as defined in the *Highway Traffic Act*,
- (b) a dual-purpose vehicle or a combination of a dual-purpose vehicle and a trailer as defined in the *Highway Traffic Act*, or
- (c) the combination of a motor vehicle, as defined in the *Highway Traffic Act*, drawing a trailer or trailers, as defined in that Act;

“Committee” means the Advisory Committee on Truck Transportation;

“compensation” includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly;

“dual-purpose vehicle” means a motor vehicle, other than one commonly known as a passenger car, designed by the manufacturer for the transportation of persons and goods;

“goods” includes all classes of materials, wares and merchandise and live stock;

“highway” means a highway as defined in the *Highway Traffic Act*;

“licensee” means the holder of an operating licence issued under this Act;

“Minister” means the Minister of Transportation and Communications;

“Ministry” means the Ministry of Transportation and Communications;

“officer” means a member of the Ontario Provincial Police Force or an officer of the Ministry designated in writing by the Minister to assist in the enforcement of this Act;

“operate” means to cause to be driven on a highway and “operated” has a corresponding meaning;

“operating authority” means a specific authority to operate that is contained within an operating licence;

“operating licence” means an operating licence issued under this Act containing one or more operating authorities;

“owner” means the person in whose name the vehicle portion of a permit is issued for a motor vehicle under the *Highway Traffic Act*;

R.S.O. 1980,
c. 198

“prescribed” means prescribed by the regulations;

“public truck” means a commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers drawn by it, operated by the holder of an operating licence;

“Registrar” means the Registrar of Motor Vehicles appointed under the *Highway Traffic Act*;

“regulations” means the regulations made under this Act;

“road construction materials” means rubble carried to or from a construction or demolition site and 01 928 — animal or poultry manure, 14 1 — dimension stone, quarry, 14 219 — broken or crushed stone or riprap, not elsewhere classified, excluding ground or otherwise treated, 14 41 — gravel or sand, excluding abrasive, 14 715 — rock salt, crude, crushed, lump or screened, excluding sodium chloride (common salt), 14 719 — chemical or fertilizer minerals, not elsewhere classified, excluding ground or otherwise treated, 14 919 — non metallic minerals, not elsewhere classified, loam, soil or topsoil, not elsewhere classified, excluding ground or otherwise treated at mine site or fuels, 28 126 32 — calcium chloride, liquid, 28 126 33 — calcium chloride, other than liquid, 28 181 7 — urea, other than liquor or liquid, 28 71 — fertilizers excluding milled, mined or otherwise prepared, natural boron, sodium or potassium compounds, 29 116 — asphalt pitches or tars, petroleum, coal tar, coke oven or natural gas, 32 952 15 — cinders, clay, shale (expanded shale), slate or volcanic (not pumice stone) or haydite, 33 112 — furnace slag, excluding ground or otherwise treated;

“STCC” means the Standard Transportation Commodity Code filed with the Canadian Transport Commission;

“STCC number” means a number in STCC representing the goods or materials classified under that number;

“toll” means any fee or rate charged, levied or collected for the transportation of goods in or on a public truck.

Idem

(2) Where, in this Act or the regulations, a reference to goods or materials is preceded by a STCC number, the goods or materials referred to are those indicated in the STCC by reference to that number.

Purpose

2. It is hereby declared that an effective goods movement system by highway is essential to advance the interests of the users of transportation and to maintain the economic well-being and growth of Ontario and that these objectives are to be achieved by the regulatory scheme established by this Act which is to be interpreted so as to advance the objective that the system will,

- (a) foster productive, fair and innovative competition and the existence of a dependable and viable trucking industry in furtherance of the public interest; and
- (b) be of benefit to the users of transportation services and not for the protection from competition of individual providers of such services.

Operating licence required to transport goods for compensation

3.—(1) No person shall operate a commercial vehicle on or after the 1st day of January, 1988, to carry goods of any other person for compensation unless it is done,

- (a) under an operating licence held by the person operating the vehicle; and
- (b) pursuant to the licence.

General authority

(2) Every operating licence authorizes the holder thereof to carry 01 928 1 — unprepared manure from animal, bird, dog, fowl, goat, sheep or guano, 14 719 — chemical or fertilizer minerals, not elsewhere classified in STCC, 28 181 70 — urea, other than liquid and 28 71 — fertilizers in bulk to or from any point within Ontario during April, May and June in a commercial vehicle that is not a tank vehicle.

Owner-driver licence, single-source licence limitations

(3) An operating licence that is an owner-driver or single-source operating authority authorizes the operation of a commercial vehicle to carry goods for compensation only when a notice of the contract under which the particular vehicle is being operated has been filed with the Ministry as prescribed.

Exception

(4) Subsection (1) does not apply to prohibit the carriage of,

- (a) goods solely within a commercial zone designated under section 14 or an urban municipality;
- (b) fresh fruit and fresh vegetables grown in continental United States of America or Mexico;
- (c)- goods used on farms and farm products that are 01 1 — field crops, 01 2 — fresh fruits or tree nuts, 01 3 — fresh vegetables, 01 91 — horticultural specialties, 01 99 — farm products, not elsewhere classified in STCC, 01 41 — live stock and 01 92 — animal specialties that are carried in a commercial motor vehicle equipped with not more than three axles that does not draw a trailer;
- (d) 01 421 10 — milk, fresh, unprocessed and 20 261 — bulk fluid milk, skim milk or cream carried on behalf of The Ontario Milk Marketing Board;
- (e) wheat by a person appointed to act as agent for the Ontario Wheat Producers' Marketing Board where the wheat is being carried from the agent's premises in a commercial vehicle registered in the agent's name;
- (f) ready mixed concrete;
- (g) 24 1 — primary forest or raw wood materials that are the products of the forest from which they are being carried;
- (h) goods carried by an operator of a commercial vehicle if the goods have been sold, bought, produced, transformed or repaired by, or have been lent, borrowed, given or leased by, the operator as an integral part of the operator's primary business which business is not the operation of public trucks;
- (i) goods in a bus being operated under the authority of an operating licence issued under the *Public Vehicles Act*; or
- (j) goods in a commercial vehicle on or before the 1st day of July, 1989, where the carriage would have been exempt under the *Public Commercial Vehicles Act*.

R.S.O. 1980,
c. 425

R.S.O. 1980,
c. 407

(5) Subsection (1) does not apply to a holder of a certificate of intercorporate exemption or any affiliated corporation

Idem.
certificate of
intercorporate
exemption

named in the certificate carrying goods owned by any of them pursuant to the certificate.

Idem,
trip permit

(6) Subsection (1) does not apply to the holder of a trip permit operating the commercial vehicle specified therein in accordance with the permit.

Transportation
for
compensation

(7) Where goods are carried in a commercial vehicle that is not owned by the owner of the goods and compensation is received for the use of the vehicle other than in accordance with a lease of the vehicle, the goods shall be deemed to be carried for compensation.

Idem

(8) Where goods are carried in a commercial vehicle that is leased by the owner of the goods but the lessor of the vehicle, directly or indirectly,

- (a) engages or pays the driver of the vehicle;
- (b) exercises control over the driver of the vehicle in the course of his employment as driver; or
- (c) assumes responsibility for the goods,

the goods shall be deemed to be carried for compensation.

Definition,
lease

(9) For the purpose of this section, "lease" means a written agreement setting out fully and accurately all provisions under which the vehicle is leased and giving the lessee exclusive possession and control over the vehicle throughout the entire term of the agreement.

Offence

(10) Every person who contravenes subsection (1) is guilty of an offence and,

- (a) on the first conviction, is liable to a fine of not less than \$250 and not more than \$5,000; and
- (b) on each subsequent conviction, is liable to a fine of not less than \$500 and not more than \$5,000.

Idem

(11) For the purposes of subsection (10), a conviction that occurs more than five years after a previous conviction is not a subsequent conviction.

Board to
issue licences

4.—(1) Operating licences shall be issued by the Board in accordance with this Act and the regulations.

Special
licences

(2) The Board may issue an operating licence containing a class of operating authority that is,

(a) a single-source authority authorizing the licensee to provide,

(i) commercial vehicles of which the licensee is the owner or lessee, and

(ii) drivers for the vehicles referred to in sub-clause (i),

under one or more contracts; or

(b) an owner-driver authority authorizing the licensee to provide,

(i) one commercial vehicle of which the licensee is the owner or lessee, and

(ii) a driver for the vehicle referred to in sub-clause (i),

under one contract at any given time.

(3) No person shall hold,

Limit on
authorities

(a) more than one owner-driver authority at the same time; or

(b) an owner-driver authority and a single-source authority other than a single-source authority granted under section 8.

(4) The Board, where it is in the public interest to do so, may grant a special authority to any licensee which, for the purpose of subsection 3 (1), shall be deemed to be part of that licensee's operating licence, subject to the conditions set out in the special authority, for seven days or such shorter time as is set out in the special authority.

Special
authority

(5) When granting an operating authority, the Board may make the authority subject to such provisions and limitations as the Board considers in the public interest, and, when there has been a public interest test hearing conducted by the Board where the issue of provincial interest has been raised under subsection 9 (5), the Board shall make the authority subject to such provisions and limitations as are recommended by the Board.

Subject to
limitations

(6) Provisions or limitations imposed under subsection (5) shall not serve to limit the number of commercial vehicles

Exception

operated under an operating authority except where the authority is,

- (a) a single-source authority;
- (b) an owner-driver authority;
- (c) granted after a hearing conducting a public interest test; or
- (d) for the carriage of road construction materials,

and shall not be inconsistent with any provision in this Act or the regulations.

Vehicle
certificates
limiting
number of
vehicles

(7) The Board,

- (a) when granting an operating authority limiting the number of vehicles that may be operated under the authority; or
- (b) with respect to the holder of an operating authority for carriage of road construction materials issued under the *Public Commercial Vehicles Act*,

R.S.O. 1980,
c. 407

shall issue vehicle certificates in a number not exceeding the number of vehicles permitted to be operated under the authority.

Limit on
vehicles
under
contract

(8) No holder of a single-source authority or an owner-driver authority shall have more commercial vehicles under contract at any time than the number of vehicle certificates held under the authority.

Vehicle
certificate

(9) A vehicle certificate shall state the relevant operating authority.

Expiry

(10) An operating licence may be issued to expire,

- (a) at the end of a specified term;
- (b) upon a specified day; or
- (c) upon the occurrence of a specified event.

Notice of
change



(11) Where the name or address of a holder of an operating licence changes from that set out in the application for the licence or a previous notice of change, the holder shall file, with the Board, a notice of the change within fifteen days after the change.

(12) Every licensee who does not maintain a place of business in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this Act and to accept service for and on behalf of the licensee.

Ontario agent

(13) For the purpose of subsection (2), a “contract” means a contract, for a period of at least thirty consecutive days, that gives the licensee the right to carry goods of the other party to the contract, which goods are under the control of the other party, and prohibits the licensee from using the vehicle specified in the contract from carrying goods on the licensee’s behalf or for a person who is not the other party to the contract.

Definition, contract

5.—(1) Operating licences and operating authorities are not transferable save and except with the approval of the Board.

Licence not transferable

(2) Where a licensee, who is an individual, dies, the executor or administrator of the estate of the deceased may carry on the business of the deceased in accordance with the operating licence for not more than six months after the death.

Death

(3) The directors of a corporate licensee shall report forthwith to the Board,

Change in control of corporation

(a) every issue or transfer of shares of its capital stock or change in beneficial ownership thereof; or

(b) an amalgamation,

that may affect control of the operations of the corporation.

(4) Every licensee shall report to the Board any arrangement whereby any part of the transportation service authorized is controlled in any way by a person other than the licensee.

Where licensee does not control business

(5) The report referred to in subsection (4) is not required where the arrangement is a contract of the nature referred to in subsection 4 (2).

Exception to subs.(4)

6.—(1) An operating licence shall not be issued or an operating authority granted unless the applicant demonstrates fitness to carry on the business of carrying goods for compensation as described in the application for the licence.

Requirements for licence

(2) An application for an operating licence may not be accepted from an applicant who does not hold a certificate of

Idem

competency or whose application is not co-signed by an employee who holds such a certificate.

Idem

(3) Every applicant for an operating licence shall file with the Board, with respect to the business for which authority is sought, a description of the proposed transportation service and evidence that the applicant,

(a) is not an undischarged bankrupt;

(b) is insurable; and

R.S.O. 1980,
c. 198

(c) holds a Commercial Vehicle Operator's Registration Certificate issued under the *Highway Traffic Act* that is not under suspension or subject to a fleet limitation.

Matters to
be considered

(4) In determining the fitness of an applicant, the Board shall consider,

R.S.O. 1980,
cc. 198, 407,
83, 141, 137

1981, cc. 59,
69

R.S.C. 1970,
cc. M-14,
C-34, L-1

(a) the past conduct of the applicant or, where the applicant is a corporation, of its officers as disclosed by the record of convictions available to the Minister under this Act and the *Highway Traffic Act*, *Public Commercial Vehicles Act*, *Motor Vehicle Transport Act* (Canada), *Compulsory Automobile Insurance Act*, *Environmental Protection Act*, *Employment Standards Act*, *Fuel Tax Act*, 1981, *Dangerous Goods Transportation Act*, 1981, *Criminal Code* (Canada), *Canada Labour Code*, *Transportation of Dangerous Goods Act* (Canada), and the regulations thereunder and such other statutes as may be prescribed, and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and

(b) such other matters as are prescribed.

Exception
to subs.(2)

R.S.O. 1980,
c. 407

(5) Subsection (2) does not apply where the application is for a licence to carry goods of a nature and on a scale that had been exempt under the *Public Commercial Vehicles Act* and the applicant was engaged in that transportation during the six months immediately preceding the 1st day of January, 1988.

Notice of
intention to
issue licence

7.—(1) On being satisfied of the fitness of an applicant to hold a licence, the Board shall give thirty days notice of the intention to issue an operating licence to the applicant by publication in *The Ontario Gazette*.

Hearing

(2) Any person may, within the thirty-day period referred to in subsection (1), file with the Board a written request that,

- (a) where there is an allegation that false or misleading information was given to the Board by the applicant, the Board hold a hearing to determine the fitness of an applicant; or
- (b) the Board hold a hearing to conduct a public interest test,

and file evidence of service of a copy of the request on the applicant.

Idem

(3) Where a request is made under clause (2) (a) that the Board, in its absolute discretion, does not consider merely frivolous or vexatious, the Board shall hold the hearing requested, which hearing shall be limited to the allegation that false or misleading information was given.

Reassessing fitness

(4) Where the Board finds, after a hearing under subsection (3), that false or misleading information was given, the Board shall reassess the question of the applicant's fitness to hold a licence.

Issue of licence

(5) Where subsection (6) does not apply and no request is made under clause (2) (b), and the Board continues to be satisfied that the applicant is fit to hold the licence, the Board shall issue the licence applied for.

At Minister's direction

(6) The Minister may direct the Board to hold a public interest test and, where the Minister so directs, the Board shall hold the hearing.

Idem, by Board

(7) Where a request is made under clause (2) (b), the Board shall, subject to section 9, hold the hearing requested.

Determine fitness first

(8) A hearing to conduct a public interest test shall not be held until a final determination has been made that the fitness of the applicant has been demonstrated.

Exception

(9) The requirement to hold a hearing to conduct a public interest test does not apply where the application is for an owner-driver authority or an operating authority to carry,

- (a) waste or scrap being 40 29 — miscellaneous waste or scrap; or
- (b) farm products being 01 1 — field crops, 01 2 — fresh fruits or tree nuts, 01 3 — fresh vegetables, 01

91 — horticultural specialties and 01 99 — farm products, not elsewhere classified in STCC.

Idem

R.S.O. 1980,
c. 407

(10) The requirement to hold a hearing to conduct a public interest test does not apply where the applicant holds an operating licence issued under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 and the authority applied for does not exceed that which would be contained in that licence if it had been issued pursuant to a rewritten certificate under section 10b of the *Public Commercial Vehicles Act*.

Stay of
licence

(11) Where a request for a hearing is made in respect of an application, the operating authority applied for shall not be granted until the hearing is completed or there has been a final disposition of the rejection of the request.

Application
of cl. (2) (b)
and subs. (6)

(12) Clause (2) (b) and subsection (6) cease to apply five years after coming into force.

Temporary
licence

8. Where the Board is satisfied that the circumstances warrant it and that it is in the public interest to do so, the Board may, notwithstanding subsections 6 (1) and 7 (12), issue an operating licence or grant an operating authority that is valid for not more than twelve months.

Public
interest
test

9.—(1) A hearing to conduct a public interest test pursuant to a request under clause 7 (2) (b) shall be held only if the person who asked for the test makes out a written case to the Board that,

(a) the granting of the operating authority applied for would be likely to have a significant detrimental effect on the public interest using the criteria set out in subsection 10 (1); and

(b) the request is not frivolously made.

Idem

(2) A hearing to conduct a public interest test pursuant to the direction of the Minister shall be held only after the Minister has published, in *The Ontario Gazette*, the reasons for wanting the hearing.

Burden of
proof

(3) In a hearing where a public interest test is conducted, the burden of proof is,

(a) where the hearing is initiated by the Minister, on the applicant for the operating authority; or

(b) where the hearing is as a result of a request under clause 7 (2) (b), on the person making the request.

(4) Before holding a hearing under this section, the Board shall give the Minister fifteen days notice thereof.

Notice to
Minister

(5) If the Minister is of the opinion that the subject-matter of a hearing of which the Minister receives notice is or is likely to be a matter of provincial interest, the Minister shall so advise the Board in writing together with the reasons before the day fixed by the Board for the hearing and, where that is done, may direct the Board,

Provincial
interest

- (a) to postpone the hearing until thirty days after the day fixed; or
- (b) to examine and investigate such matters relating to transportation policy as are referred to it by the Minister, to report thereon to the Minister and to postpone the hearing until thirty days after the date of the report.

(6) The Board, where it holds a hearing after it has been advised that the provincial interest may be involved, shall, as part of that hearing, consider and give effect to every policy statement issued by the Lieutenant Governor in Council related to the provincial interest identified.

Policy
statements

(7) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements as required under subsection (6), the Lieutenant Governor in Council may give notice thereof with particulars to the Board within thirty days after the date of the decision of the Board and the Board shall review its decision and may amend its decision.

Review of
decision

(8) Where the Lieutenant Governor in Council is of the opinion that the Board has failed to give effect to policy statements in a review, the Lieutenant Governor in Council may give notice thereof to the Board within thirty days after the review and may substitute the decision of the Lieutenant Governor in Council for all or any part of the decision of the Board.

Substituting
decision

10.—(1) In a hearing to conduct a public interest test, the Board shall determine whether granting the operating authority applied for, as set out in the material filed under subsection 6 (4), would have a significant detrimental effect on the public interest in relation to the market proposed to be served by investigating whether there would be significant adverse impact on the following:

Matters
considered
in public
interest test

1. The existence of a dependable and viable trucking industry throughout the province.
2. The availability of appropriate trucking services to shippers and receivers.
3. The ultimate Ontario consumers of goods and services.
4. Overall or net effect on regional employment within Ontario and the gross provincial product.
5. The public interest as set out by the Lieutenant Governor in Council in policy statements issued under section 36.

Board
report

(2) Where, after a hearing to conduct a public interest test, the Board finds that granting the operating authority applied for, subject to any limitations or variations recommended by the Board, will not have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Minister and recommend that the Minister,

- (a) grant the authority applied for;
- (b) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or
- (c) where the issue of provincial interest has been raised under subsection 9 (5), issue an operating licence with provisions that vary from those applied for.

Issuing
licence

(3) Upon receiving a report under subsection (2), the Minister shall issue a licence in the terms recommended by the Board.

Deferred
issuance

(4) The issue of any licence under subsection (3) may be delayed for up to six months after the Board's decision if the Board so recommends.

Certificate of
intercor-
porate
exemption

11.—(1) The Minister shall issue a certificate of intercorporate exemption to every applicant therefor who is not precluded from receiving it by subsection (2).

Where not
to be issued

(2) A certificate of intercorporate exemption shall not be issued,

- (a) to a licensee; or
- (b) to a corporation that does not show on the application an affiliated corporation,

and shall not name therein an affiliated corporation that holds an operating licence.

(3) The Minister may, in a certificate of intercorporate exemption, set out such conditions and limitations as the Minister sees fit to govern the carriage of goods under the certificate. Conditions in certificate

(4) For the purpose of this Act, a corporation is an affiliate of another corporation if one of them is the subsidiary of the other, if both are subsidiaries of the same corporation or if each is controlled by the same individual or corporation. Affiliate

(5) For the purpose of subsection (4), a corporation is controlled by an individual corporation or group of corporations if, Control

- (a) voting securities of the corporation carrying more than 90 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons;
- (b) the votes carried by the securities referred to in clause (a) are entitled, if exercised, to elect all members of the board of directors of the corporation.

(6) For the purpose of subsection (4), a corporation is a subsidiary of another corporation if, Subsidiary

- (a) it is controlled by,
 - (i) the other corporation,
 - (ii) the other corporation and one or more corporations each of which is controlled by that other corporation, or
 - (iii) two or more corporations each of which is controlled by the other corporation; or
- (b) it is a subsidiary of a corporation that is the other corporation's subsidiary.

Notification
of change —
re intercor-
porate
exemption

12.—(1) Every holder of a certificate of intercorporate exemption shall notify the Minister of any change in the facts set out in the certificate within thirty days after the change.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$5,000.

Trip
permit

13.—(1) Subject to subsection (3), the Minister shall issue a trip permit to every applicant therefor.

Idem

(2) Every trip permit shall,

(a) specify the trip and vehicle, including drawn vehicles if any, for which it applies; and

(b) be subject to the conditions set out therein.

Limit of
three permits

(3) No more than three trip permits may be issued to one person within any twelve-month period.

Commercial
zones

14.—(1) The Minister may designate commercial zones and may vary the boundaries of a commercial zone but, where the Minister does so, it shall be done only in accordance with the recommendations of the Board.

Referral
to Board

(2) Where the Minister proposes to designate a commercial zone or to vary the boundaries of a commercial zone, he shall refer the proposal to the Board and the Board shall hold a public hearing and report thereon to the Minister with its recommendations.

Second
hearing

(3) The Minister may require the Board to hold a second public hearing in respect of all or any part of a proposal that has been reported on under subsection (2) and to again report thereon to the Minister with its recommendations.

Matter for
the Board
to consider

(4) In determining whether to recommend the designation of a commercial zone, the Board shall consider whether the public interest will be served thereby.

Public
interest

(5) In considering public interest, the Board shall take into account the impact on the users of for hire transportation services within the proposed zone and on the providers of the services.

Idem

(6) In considering the impact on the providers of services, the Board shall take into account the impact on those to whom this Act does not apply, who are operating exclusively

within the proposed zone and on licensees who would be affected thereby.

15.—(1) No person shall knowingly hire, directly or indirectly, or participate in an arrangement to hire a person to carry goods where the services would be carried out in contravention of subsection 3 (1).

Prohibited
service —
arranging

(2) No person shall,

Prohibited
service —
performing

(a) hold himself out as willing to; or

(b) undertake to,

arrange to carry goods where the service would be carried out in contravention of subsection 3 (1).

16.—(1) No licensee shall carry goods under the authority of an operating licence unless the licensee or an employee of the licensee holds a certificate of competency and, where the regulations so require, such greater number of employees as are indicated by the regulations hold a certificate of competency.

Certificate
of
competency
required

(2) In every situation where the regulations require more than one certificate holder, the licensee is permitted ninety days in which to effect compliance.

Delayed
effect

(3) Every licensee, who ceases to meet the requirements referred to in subsection (1) because of the termination of employment of an employee who holds a certificate of competency, shall be deemed to meet the requirements for ninety days after the termination.

Idem

(4) An employee holding a certificate of competency may be counted for one licensee only when determining whether the requirements of subsection (1) are met except where the licensees are affiliated corporations.

Limited use
of certificate

(5) Every licensee shall notify the Minister within fifteen days after a change in certificate holders whose employment is relied on to satisfy the requirements of subsection (1) of the change.

Change in
certificate
holders

(6) Subsection (1) does not apply to an executor or administrator of an estate carrying on business in accordance with subsection 5 (2).

Exception

(7) Every licensee who holds an operating licence issued,

Idem

R.S.O. 1980,
c. 407

- (a) under section 10b of the *Public Commercial Vehicles Act*;
- (b) under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 in respect of goods to be transported before the 1st day of January, 1989; or
- (c) under subsection 6 (3) (corridor licence),

is exempt from the application of subsection (1).

Idem

R.S.O. 1980,
c. 407

(8) Every licensee whose authority is limited to the carriage of goods that were exempt under the *Public Commercial Vehicles Act* or to the carriage between points that were within an urban zone under that Act is exempt from the application of subsection (1).

Licence to
be carried

17.—(1) Every person driving a public truck on a highway shall carry or keep, in a readily accessible place in the vehicle, a copy of the operating licence under which the vehicle is being operated and shall surrender the copy for inspection upon the demand of an officer.

Certificate of
intercor-
porate
exemption to
be carried

(2) Every driver of a commercial vehicle that is being operated under a certificate of intercorporate exemption shall carry or keep in a readily accessible place in the vehicle,

- (a) the certificate or a copy thereof; and
- (b) a shipping document signed by the consignor of the goods carried showing the name of the consignor, the name and address of the consignee, the originating point and the destination of the shipment and the particulars of the goods comprising the shipment,

and shall surrender them for inspection on the demand of an officer.

Copy of
lease to be
carried

(3) Every driver of a commercial vehicle that is under lease or contract to the owner, consignor or consignee of the goods being carried shall carry at all times while carrying the goods on a highway a copy of the lease, contract or notice of contract and shall surrender it for inspection on the demand of an officer.

Trip permit
to be
carried

(4) Every driver of a commercial vehicle that is being operated under the authority of a trip permit shall carry or keep the permit in a readily accessible place in the vehicle and shall surrender it for inspection on the demand of an officer.

(5) Every person operating a public truck under an operating authority that limits the number of commercial vehicles that may be operated thereunder shall carry in the vehicle a vehicle certificate issued pursuant to such operating authority and shall surrender it for inspection on the demand of an officer.

Where limit
on number
of vehicles

18.—(1) Except as otherwise provided in the regulations, every licensee shall publish, as prescribed, a tariff of tolls showing the rates and charges and the conditions of carriage for the carrying of goods to and from points in respect of which the carriage is provided or offered by the licensee.

Publishing
tariffs

(2) No licensee shall charge a toll other than that contained in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff.

Tolls

(3) Subsection (2) does not apply to a licensee who charges the toll under a contract, of which there is written evidence, that is for a term,

Exception

(a) of less than fourteen days;

(b) of not less than six months and that provides for an ascertainable maximum quantity of goods to be transported at that toll; or

(c) other than as set out in clause (a) or (b) but has been approved by the Board.

(4) A tariff of tolls shall not come into effect until fifteen days after it has been published in the prescribed manner or, where the Board has waived the fifteen days notice, until it has been published in the prescribed manner.

Coming
into effect

(5) The Board, on the application of a licensee, may, in any particular situation, reduce or waive the fifteen days notice referred to in subsection (4) or approve the term of a contract for purposes of clause (3) (c).

Power of
Board

19.—(1) Except as otherwise provided in the regulations, every licensee shall issue a bill of lading to the person delivering or releasing goods to the licensee for carriage for compensation.

Bill of
lading

(2) A signed copy of every bill of lading issued under this Act shall be retained, as, where and for the time prescribed, by the consignor of the goods involved and by the issuer.

Copy to be
retained

Production
of bill
of lading

(3) Except as otherwise provided in the regulations, every driver operating a public truck shall carry a copy of the bill of lading in respect of the goods being carried and shall surrender it for inspection on the demand of an officer.

Copy of bill
of lading to
accompany
all goods

(4) Where a shipment of goods is carried on more than one vehicle, the licensee shall ensure that every part of the shipment is accompanied by a copy of the appropriate bill of lading.

Way bill

(5) For the purpose of subsections (3) and (4), a way bill, containing such information as is prescribed, may be substituted for the bill of lading.

Exemption
certificate

(6) The Minister may grant a bill of lading exemption in an operating authority to a licensee if the operating authority is within a prescribed class.

Idem

(7) Subsections (3) and (4) do not apply in situations where there is no bill of lading or way bill because its use is obviated through the existence of an exemption granted under this section.

Access to
records

(8) Every person to whom a bill of lading exemption has been granted under subsection (6) shall make available to an officer of the Ministry, upon demand, access to the holder's records, whether in printed form or on film or the access is by electronic means or otherwise, and shall assist the officer in examining and extracting therefrom information that would, except for the exemption, be required to have been contained in a bill of lading or way bill.

Insurance

20. Every licensee shall carry such insurance or provide such bond as is prescribed and shall ensure evidence thereof is carried in every commercial vehicle operated by the licensee.

Direction
to stop

21. Any officer may, for the purpose of an examination, direct, by signals or otherwise, the driver of any commercial vehicle driven on a highway to stop, and the driver upon being so directed shall stop the vehicle.

Examination
by officer

R.S.O. 1980,
c. 198

22.—(1) Any officer may, at any time, examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the *Highway Traffic Act* and the regulations under either Act are being complied with and the person in control of the vehicle shall assist in the examination of it, its contents and equipment.

Surrender
of documents

(2) Where a commercial vehicle examined under this section contains goods, the officer conducting the examination

may require the person in charge of the vehicle to surrender all documents in the possession of that person or in the vehicle relating to the operation of the vehicle and to the carriage and ownership of the goods and to furnish all information within that person's knowledge relating to the details of the current trip and the ownership of the goods.

(3) Where an officer is of the opinion, on reasonable and probable grounds, that a commercial vehicle is being operated in contravention of subsection 3 (1), the officer may,

Seizure or
detention

(a) direct the driver of the vehicle to drive the vehicle to such location as is reasonable in the circumstances and detain it at that location; and

(b) seize the permits and number plates for the vehicle,

until the vehicle is able to be operated in compliance with subsection 3 (1).

(4) Every driver who is directed under clause (3) (a) shall comply with the direction.

Duty on
driver

(5) Every permit seized under subsection (3) shall be deemed to be under suspension for the purposes of section 33 of the *Highway Traffic Act* while it is in the custody of the officer seizing it.

Permit
suspension

R.S.O. 1980,
c. 198

(6) Where permits and number plates have been seized or a commercial vehicle has been detained under subsection (3), the person entitled to possession of the vehicle may apply to the District Court for an order that the permits and plates be returned or the vehicle released, as the case may be, and upon a security being deposited with the Court in such amount not to exceed \$5,000, as determined by the Court, the order may be issued.

Order to
release

(7) Every security deposited under subsection (6) shall be held until the final disposition of a charge laid in respect of the believed contravention that led to the seizure or detention or, where a charge is not laid within six months after the seizure or detention, the expiration of the six-month period, whichever first occurs.

Disposition
of security

(8) Where there is a conviction in respect of a charge referred to in subsection (7), the security deposited shall be applied to pay the fine imposed.

Idem

(9) All costs necessarily incurred in detaining and storing a vehicle under subsection (3) are a lien on the vehicle.

Lien

Examination
of records

23. An officer of the Ministry may examine all books, records and documents of,

- (a) a licensee or a holder of a trip permit relating to the business of operating public trucks; or
- (b) a holder of a certificate of intercorporate exemption or of an affiliated corporation named in the certificate relating to the transportation of goods for compensation,

for the purpose of ensuring that the provisions of this Act and the regulations are being complied with and the officer may, for the purpose of the examination, upon producing his or her designation as an officer of the Ministry, enter at any reasonable time the business premises of the licensee, holder or affiliated corporation, as the case may be.

Investigation

24.—(1) Where the Minister believes, on reasonable and probable grounds, that any person has contravened a provision of this Act or the regulations, the Minister may appoint one or more persons to investigate whether the contravention has occurred and the person appointed shall report the results of the investigation to the Minister.

Powers of
investigator

(2) For purposes relevant to an investigation under this section, the investigator may inquire into and examine the business affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his or her appointment, enter, at any reasonable time, the business premises of the person and examine books, papers, documents and things relevant to the investigation; and
- (b) inquire into negotiations and transactions made by or on behalf of or in relation to the person relating to the transportation of goods or the use of public trucks or that are otherwise relevant to the investigation,

R.S.O. 1980,
c. 411

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

No person
shall obstruct
investigator

(3) No person shall obstruct an investigator in the course of an investigation under this section or withhold from an investigator or conceal or destroy any books, papers, documents or things relevant to the investigation.

(4) Where a justice of the peace is satisfied, upon an application without notice by an investigator acting under this section, Application to justice of the peace

- (a) that the investigation has been ordered and that the applicant has been appointed to conduct it; and
- (b) that there are reasonable grounds for believing there are in a specified building, dwelling, receptacle or place, books, papers, documents or things relating to the investigation,

the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the investigator, together with such police officers as the investigator calls upon to assist, to enter and search, if necessary by reasonable force, the building, dwelling, receptacle or place for the books, papers, documents or things and to examine them.

(5) Every entry and search authorized under subsection (4) shall be made between sunrise and sunset unless the order authorizes the investigator to make the search at night. Times of entry

(6) The Minister may appoint an expert to assist in examining books, papers, documents or things examined under clause (2) (a) or subsection (4). Expert examination

25.—(1) Any person, Copies

- (a) obtaining a document under section 22, may take the document for the purpose of making a copy of it; or
- (b) in the course of an investigation under section 23 or 24, upon giving a receipt therefor, may take anything that may be examined under that section for the purpose of making copies thereof,

but the copying shall be done as quickly as reasonably possible and the thing copied shall be promptly returned thereafter.

(2) Any copy made as provided in subsection (1) and certified to be a true copy by the person making the copy is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and that the facts set out therein are true. Idem

Cancellation
or
amendment
of certificate

26.—(1) The Minister may amend a certificate of intercorporate exemption where a corporation named in the certificate is no longer affiliated to the holder of the certificate or, where the corporation named in the certificate is the only one so named and is no longer affiliated to the holder of the certificate, the Minister may cancel the certificate.

Minister may
suspend or
cancel
certificate

(2) The Minister may suspend or cancel a certificate of intercorporate exemption where the holder thereof or any person under the control or direction of the holder or of an affiliated corporation named therein contravenes this Act or the regulations, the *Highway Traffic Act* or the regulations thereunder or the provisions of the certificate, and the contravention is such that there are grounds for believing that transportation services permitted by the certificate will not be carried on in accordance with the law.

R.S.O. 1980,
c. 198

Cancellation
of licence

27.—(1) The Minister may cancel an operating licence,

- (a) in whole, where the licensee fails to provide any part of the transportation service for which the licensee is licensed for a continuous period of one year;
- (b) in part, where the licensee fails to provide transportation service in respect of that part for a continuous period of one year; or
- (c) in whole or in part at the request of the licensee.

Suspension
or
cancellation
of licence

(2) The Minister may suspend or cancel an operating licence in whole or in part where,

- (a) the licensee or any person under the control or direction of the licensee contravenes this Act or the regulations, any Act referred to in clause 6 (5) (b) or the provisions of the licence and the contravention is such that there are reasonable grounds for believing that the transportation services permitted by the licence will not be carried on in accordance with this Act or the regulations;
- (b) there has been misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service;
- (c) the licensee is financially incapable of providing transportation services in accordance with this Act and the regulations or the provisions of the licence

or of meeting the licensee's financial responsibilities to users of the services; or

- (d) the licensee holds an owner-driver or single-source authority and has been a party to a contract under the authority that has been cancelled in less than thirty days in circumstances that afford reasonable grounds for believing that the transportation service authorized by the authority will not be carried on in accordance with this Act and the regulations.

(3) The Minister may cancel a bill of lading exemption of any holder of an operating licence who does not comply with subsection 19 (8) (access to records) or whose records do not disclose the information that is required in a bill of lading or way bill.

Cancellation of bill of lading exemption certificate

28.—(1) Where the Minister proposes to suspend or cancel an operating licence, in whole or in part, to suspend, amend or cancel a certificate of intercorporate exemption or to cancel a bill of lading exemption, the Minister shall serve notice of the proposal together with reasons therefor on the licensee or certificate holder.

Notice of proposal to cancel, etc.

(2) Every person who is served with a notice under subsection (1) and serves on the Minister and the Board, within fifteen days after that person receives service of the notice, a request for a hearing, is entitled to a hearing by the Board in respect of the proposal.

Right to hearing

(3) Where the Minister does not receive a request for a hearing as provided in subsection (2), the Minister may, on the expiration of the fifteen days referred to in subsection (2), carry out the proposal.

Where no hearing requested

(4) For the purpose of subsection (1), a notice that is mailed by prepaid post to the licensee or certificate holder at that person's address last known to the Minister shall be deemed to have been served on the third day after the day of mailing.

Service

(5) The Board, on application by a licensee or certificate holder, as the case may be, may extend the time for requesting a hearing, either before or after expiration of the fifteen-day period, and may give such directions as it considers proper consequent upon the extension.

Extension of time

(6) The Minister, the licensee or certificate holder and such other persons as the Board may specify are parties to every hearing under this section.

Parties

Efforts
to comply

(7) In a hearing held under this section, the Board shall take into account, where appropriate, evidence as to the manner in which the licensee has carried on operations under the licence after receipt of notice of hearing and up to the hearing.

Opportunity
to examine
evidence

(8) The Minister shall give any party to a hearing an opportunity to examine, before the hearing, all documentary evidence that will be introduced and all reports, the contents of which, will be given in evidence at the hearing.

Recommendations
of Board

(9) The Board shall, after a hearing under this section, make a report to the Minister, setting out its findings of fact, conclusions of law and recommendations.

Decision
subsequent
to report

(10) The Minister, on receiving and considering a report made under this section, may carry out the proposal to which it relates, fully or in a modified manner and, where he does so, shall give written reasons for the decision to the licensee or holder or, where the Minister decides not to carry out the proposal, he shall so advise the licensee or certificate holder.

Referral
to Board
where
uncertainty

29.—(1) The Minister may at any time refer an operating licence to the Board where, in the opinion of the Minister, any part is ambiguous or the rights granted by the licence are uncertain and the Board shall, after a hearing, report to the Minister and may recommend that the licence be amended to resolve any ambiguity or uncertainty.

Issue of
clarified
licence

(2) Upon receipt of a report under subsection (1) that recommends a licence be amended, the Minister shall issue an amended operating licence in the form recommended by the Board.

Confidentiality

30. Every person employed in the administration of this Act, including an investigator under section 24, shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of that person's duties or employment and shall not communicate any such matter to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations or of the *Motor Vehicle Transport Act* (Canada);
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

31. Where the Minister receives a report under subsection 5 (3) or (4) or information that leads the Minister to conclude that a report should have been made under subsection 5 (3) or (4), the Minister shall refer the report or the information to the Board and the Board shall hold a hearing to determine whether persons different from those indicated at the time of the application for the licence are in actual control of the transportation service authorized by the licence and, where that is the case, the Minister shall cancel the operating licence.

Cancellation
of licence
by Minister

32.—(1) Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1,500.

Penalty

(2) Every person who knowingly makes a false statement in an application, declaration, affidavit or document required under this Act or the regulations or by the Board is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

Idem

33. Any licensee may be charged with and convicted of an offence under this Act or the regulations for which the driver of the licensee's public truck is subject to be charged and on conviction, the licensee is liable to the penalty provided for the offence.

Licensee
vicariously
liable

34. No prosecution shall be instituted under this Act without the prior consent of an officer.

Consent to
prosecute

35.—(1) There shall be a committee to be known as the Advisory Committee on Truck Transportation composed of not fewer than twelve and not more than twenty members.

Advisory
Committee
on Truck
Transportation

(2) The Minister shall appoint the members of the Committee for such terms as the Minister determines and in making the appointments shall include representatives of the Ministry, the Board, shippers and carriers.

Members

(3) The Minister shall designate a chairman and a vice-chairman from among the members appointed.

Chairman
and
vice-chairman

(4) The Minister may fill any vacancy that occurs in the membership of the Committee.

Vacancies

(5) The function of the Committee is to advise and make recommendations to the Minister on,

Function of
Committee

- (a) the effectiveness of this Act and its administration by the Ministry and the Board in relation to the objectives set out in section 2;
- (b) any matter concerning the transportation of goods in commercial vehicles; and
- (c) the degree to which the public interest test is necessary to advance the objectives of section 2.

Policy
statements

36.—(1) The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate.

Publication

(2) Every policy statement made under subsection (1) shall be published in *The Ontario Gazette*.

Ministerial
directions to
investigate

37.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as the Minister specifies and the Board shall report thereon to the Minister.

Hearings

(2) For the purposes of subsection (1), the Board may hold such hearings as it considers necessary.

Non-appli-
cation
of R.S.O.
1980,
c. 338

38. Section 22 of the *Ontario Highway Transport Board Act* does not apply to an order or decision of the Board under this Act.

One valid
licence only
R.S.O. 1980,
c. 407

39.—(1) Every operating licence issued to a licensee under the *Public Commercial Vehicles Act* or this Act is cancelled upon the issuance of a new licence under this Act to the same licensee.

Amending
licence

(2) An amended licence constitutes a new licence, as amended, for the purpose of subsection (1).

Regulations

40.—(1) The Lieutenant Governor in Council may make regulations,

- 1. prescribing classes of licences, licensees and authorities;
- 2. prescribing fees and the basis for computing fees and providing for the payment thereof;

3. prescribing conditions and limitations to which licences, authorities, permits and certificates of incorporate exemptions shall be subject;
4. prescribing the contents of and the information to be contained in bills of lading;
5. prescribing the form, amount, nature, class, provisions and conditions of insurance policies and bonds that shall be provided and carried by licensees;
6. respecting the form and content of tariffs and tolls, including conditions of carriage, the publication thereof and the payment of tolls;
7. prescribing forms, including the contents thereof and information to be contained therein, and providing for their use and the filing thereof;
8. prescribing, regulating and limiting the hours of labour of drivers of public trucks;
9. prescribing the qualifications of drivers of public trucks and prohibiting persons who do not meet the qualifications from driving public trucks;
10. prescribing equipment to be carried by public trucks and the condition and location in which the equipment shall be kept;
11. prescribing the method of bookkeeping or accounting to be used and the returns or statements to be filed by licensees and providing for the filing thereof;
12. prescribing criteria to be taken into account in determining the fitness of applicants for operating authorities and licences;
13. prescribing and providing for the information to be marked on articles covered by a bill of lading issued by licensees and exempting any class of licensees from any provision so prescribed or provided;
14. prescribing conditions that shall be deemed to be a part of every contract or a class of contract for the carriage of goods for compensation to which this Act applies;

15. exempting any class of licensees or drivers of any class of public truck from the application of sections 18 and 19 and prescribing conditions to which any exemption is subject;
16. prescribing classes of operating authorities for the purposes of subsection 19 (6) and conditions that apply to holders of operating authorities who carry goods under a bill of lading exemption;
17. governing the issue and renewal of operating licences;
18. prescribing the qualifications of applicants for and holders of operating authorities and operating licences;
19. governing the issue and renewal of certificates of intercorporate exemption and prescribing terms to which the certificates shall be subject;
20. establishing certificate of competency training programs including the prescribing of training courses, courses of study, methods of training, qualifications for certification, fixing credits to be allowed for courses, the administration of the program, providing for the granting of certificates and the recognition of previous experience;
21. prescribing classes of public trucking undertakings and the number, location and scope of duties of holders of certificates of competency required to be employed therein;
22. prescribing the contents of documents and financial statements and providing for their filing with the Minister or the Board;
23. prescribing the period of time for which certificates of intercorporate exemption are valid and providing for the renewal thereof;
24. prescribing the method of determining the number of employees required to hold a certificate of competency and providing for different calculations based on the type of venture carried on;
25. designating certificates or documents that shall, on designation, be deemed to be a certificate of competency issued under this Act;

26. respecting any matter or thing that is required or permitted to be prescribed under this Act.

(2) Any regulation may be general or particular in its application. Idem

(3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or specification, and may require compliance with any code, standard or specification that is so adopted. Adoption of codes, etc.

41.—(1) An operating licence issued pursuant to a certificate of public necessity and convenience under section 10b of the *Public Commercial Vehicles Act* shall be deemed to be an operating licence for the purpose of this Act. Transition
R.S.O. 1980,
c. 407

(2) An operating licence issued under the *Public Commercial Vehicles Act*, other than a licence referred to in subsection (1), shall be deemed to be an operating licence for the purpose of this Act until and including the 31st day of December, 1988 unless cancelled sooner by the operation of section 39. Idem

(3) A certificate of intercorporate exemption issued under section 4a of the *Public Commercial Vehicles Act* shall be deemed to be a certificate of intercorporate exemption for the purpose of this Act. Idem

(4) No person shall operate a public truck under an operating licence referred to in subsection (2) unless the vehicle bears a licence plate issued to the operator under the *Public Commercial Vehicles Act*. Limitation

(5) Subsection 6 (1) of the *Public Commercial Vehicles Act* does not apply where the application for the licence is made after the 1st day of July, 1987. Limitation
re R.S.O.
1980, c. 407,
subs. 6 (1)

42.—(1) Section 2, sections 4a and 4b, as enacted by the Statutes of Ontario, 1981, chapter 71, section 3, subsection 6 (3), sections 9, 13, 18 to 22, sections 24 to 26, section 27, as amended by the Statutes of Ontario, 1981, chapter 71, section 10, and sections 27 to 30 of the *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, are repealed.

(2) The *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, the *Public Commercial Vehicles Amendment Act, 1981*, being chapter 71, the *Public Commercial Vehicles Amendment Act, 1983*, being chapter 79, the *Public Commercial Vehicles Amendment Act, 1984*, being

chapter 20, and subsection 40 (1) of the *Truck Transportation Act, 1987*, being chapter ..., are repealed on the 1st day of January, 1989.

Commence-
ment

43. This Act comes into force on the 1st day of July, 1987.

Short title

44. The short title of this Act is the *Truck Transportation Act, 1987*.

Bill 151

An Act to amend the Ontario Highway Transport Board Act

The Hon. E. Fulton

Minister of Transportation and Communications



1st Reading November 19th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1. The definitions of “public commercial vehicle” and “public vehicle” are being deleted. They are not required in section 1.

SECTION 2. Provision is being made to provide members of the Board with remuneration and expenses.

SECTION 3. Section 16 of the Act gives the Board power to review any decision made by it. Currently, there are only two Acts under which it acts. These two Acts are being specified.

SECTION 4. With the proposed *Truck Transportation Act, 1987*, there would be a third Act under which the Board would act. The new sections 16a and 16b of the Act deal with the Board's powers of review under the *Truck Transportation Act, 1987* as well as the *Ontario Highway Transport Board Act*. The new section 16c of the Act is an added area in respect of which the Board may hold hearings. The new section 16d provides for notice of hearings to be given to the Minister.

SECTION 5. The specific reference to two Acts is being deleted. These are not necessary and the proposed *Truck Transportation Act, 1987* makes the specific references too restrictive. Subsection 19 (3) deals with the recording of oral evidence.

SECTION 6. Section 22 of the Act provides for petitions to the Lieutenant Governor in Council. The effect of the amendment is to preclude such petitions in respect of decisions on matters arising under the proposed *Truck Transportation Act, 1987*.

SECTION 7. Self-explanatory.

Bill 151

1987

An Act to amend the Ontario Highway Transport Board Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 1 (c) and (d) of the *Ontario Highway Transport Board Act*, being chapter 338 of the Revised Statutes of Ontario, 1980, are repealed.

2. Section 2 of the said Act is amended by adding thereto the following subsection:

(3) The members shall receive such remuneration and expenses as the Lieutenant Governor in Council determines. Remuner-
ation

3. Section 16 of the said Act is amended by inserting after “application” in the second line “with respect to matters arising under the *Public Commercial Vehicles Act* or the *Public Vehicles Act*”.

4. The said Act is amended by adding thereto the following sections:

16a.—(1) The Board may, if it considers it appropriate to do so, or shall, on the direction of the Minister or the Lieutenant Governor in Council, rehear any application or reconsider any decision, order, declaration or ruling made by it under the *Truck Transportation Act*, 1987. Review re
1987, c....

(2) After a rehearing or reconsideration under subsection (1), the Board may amend, revoke or confirm the decision, order, declaration or ruling. Idem

(3) The powers of the Board under this section and section 16 are concurrent with the powers of the Minister related to the suspension and cancellation of operating licences. Concurrent
powers

Appeal to
Board

16b.—(1) Any person objecting to a decision of the Board,

1987, c....

(a) made as a result of a hearing under the *Truck Transportation Act, 1987* to conduct a public interest test; or

(b) made under this Act,

may, with the consent of the Board, appeal the decision.

Idem

(2) Where the grounds for an appeal under subsection (1) are that new facts have arisen since the hearing or that the decision was based on an error of fact, the appeal shall be heard by the same members who made the original decision.

Idem

(3) Where the grounds for an appeal are other than those set out in subsection (2), the appeal shall be heard by members who were not involved in the original decision.

Interim
licence

(4) The Board, when it consents to an appeal under subsection (1), may recommend that the Minister grant an interim operating licence that is valid until the final disposition of the appeal.

Reviewing
operations
and conduct

16c.—(1) The Board may, with the prior approval of the Minister, if it considers it appropriate to do so, or shall, on the direction of the Minister, hold a hearing,

R.S.O. 1980,
c. 198

(a) into the operation of any transportation service conducted by means of commercial motor vehicles, within the meaning of section 15a of the *Highway Traffic Act*; or

(b) into the conduct of any holder of a Commercial Vehicle Operator's Registration Certificate,

to determine whether the operation or conduct,

1987, c....
R.S.C. 1970,
c. M-14

(c) contravenes the provisions of the *Truck Transportation Act, 1987*, *Motor Vehicle Transport Act* (Canada) or the regulations thereunder; or

(d) constitutes a persistent breach of contracts between the provider of the service or certificate holder and shippers.

Order by
Board

(2) When, after a hearing under subsection (1), the Board determines that there has been a contravention, it may order,

- (a) that the operation of the transportation service in the manner that caused the contravention stop;
- (b) that the conduct of the holder of the Commercial Vehicle Operator's Registration Certificate that constituted the contravention stop; or
- (c) if the operator of the transportation service is the holder of an operating licence, that the licence be amended to expire upon a specified date.

(3) Subsection (2) does not apply where the hearing is the result of a direction by the Minister if, at the time of the direction, the Minister also directed the Board to report its findings to the Registrar of Motor Vehicles.

Report to
Registrar

16d. The Board shall give the Minister thirty days notice of every hearing under section 16a.

Notice to
Minister

5. Subsection 19 (3) of the said Act is amended by striking out “under the *Public Vehicles Act* or the *Public Commercial Vehicles Act*” in the fourth and fifth lines.

6. Section 22 of the said Act is amended by inserting after “Board” in the fourth line “in respect of a matter arising under the *Public Vehicles Act* or the *Public Commercial Vehicles Act*”.

7. Section 26 of the said Act is amended by adding thereto the following subsection:

(2) The Board may order any parties to a hearing before it to pay the costs of any of the other parties involved or may make any other order with respect to costs that under all the circumstances it considers just.

Costs

8. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

9. The short title of this Act is the *Ontario Highway Transport Board Amendment Act, 1987*.

Short title

Bill 154

An Act to provide for Pay Equity

The Hon. I. Scott
*Minister responsible for
Women's Issues*

1st Reading November 24th, 1986
2nd Reading February 3rd, 1987
3rd Reading
Royal Assent

*(Reprinted as amended by the
Committee of the Whole House)*

Projet de loi 154

Loi portant établissement de l'équité salariale

L'honorable I. Scott
*ministre délégué à la
Condition féminine*

1^{re} lecture 24 novembre 1986
2^e lecture 3 février 1987
3^e lecture
sanction royale

*(Réimprimé tel qu'il est modifié par le
Comité plénier de l'Assemblée législative)*

EXPLANATORY NOTES

The Bill provides for the redressing of systemic gender discrimination in compensation for work performed by employees in female job classes in the establishments of all employers in the public sector (a defined term) and those employers in the private sector (a defined term) who employ ten or more employees. Among the features of the Bill are the following:

1. Systemic gender discrimination will be identified through comparisons between female job classes (a defined term) and male job classes (a defined term) in terms of compensation and in terms of the value of the work performed. (Section 4)
2. A criterion for determining value is set out. (Section 5)
3. Tests for the achievement of pay equity are set out. (Section 6)
4. Employers must establish and maintain compensation practices that provide for pay equity. (Section 7)
5. Certain differences in compensation such as those resulting from legitimate seniority plans or red-circling are excluded in determining pay equity. (Section 8)
6. An employer cannot reduce compensation to achieve pay equity. (Subsection 9 (1))
7. Intimidation of persons who seek enforcement of the Act or who are participating, or may participate, in enforcement proceedings is prohibited. (Subsection 9 (2))
8. All employers in the public sector and those employers in the private sector who employ at least 100 employees will be required to develop and implement pay equity plans. Employers in the private sector with more than nine and fewer than 100 employees may prepare and implement pay equity plans but are not required to do so. (Parts II and III)
9. Different classes of employers will have different time limits for implementing pay equity. (Clause 13 (2) (e))
10. Provision is made for enriched compensation adjustments for employees in the lowest paid female job classes. (Subsection 13 (3))
11. Each employer will be required to make annual adjustments in rates of compensation equal to at least 1 per cent of the employer's payroll for the preceding year until pay equity is achieved. (Subsections 13 (4) and (5))
12. Employers in the public sector will have seven years from the effective date to implement pay equity plans. (Subsection 13 (7))
13. Pay equity plans bind an employer, the employees of an employer and the bargaining agent, if any, of the employees. (Subsection 13 (9))
14. The employer and the bargaining agent for employees in a bargaining unit will negotiate the pay equity plan for the bargaining unit. (Section 14)

NOTES EXPLICATIVES

Le projet de loi a pour objet d'éliminer la discrimination systémique entre les sexes en ce qui concerne la rétribution du travail effectué par les employés des catégories d'emplois à prédominance féminine qui oeuvrent dans les établissements de tous les employeurs du secteur public (terme défini) et dans ceux des employeurs du secteur privé (terme défini) qui ont à leur service dix employés ou plus. Voici certains points saillants du projet de loi :

1. Repérage de la discrimination systémique entre les sexes au moyen de comparaisons établies entre les catégories d'emplois à prédominance féminine (terme défini) et les catégories d'emplois à prédominance masculine (terme défini) en ce qui concerne la rétribution et la valeur du travail effectué. (Article 4)
2. Établissement d'un critère servant à déterminer la valeur du travail. (Article 5)
3. Établissement de méthodes permettant de déterminer si l'équité salariale est atteinte. (Article 6)
4. Obligation pour les employeurs d'établir et de maintenir des pratiques de rétribution assurant l'équité salariale. (Article 7)
5. Exclusion, pour la détermination de l'équité salariale, de certains écarts de rétribution tels ceux qui sont fondés sur des régimes légitimes d'ancienneté ou sur la pratique du «salaire étoilé». (Article 8)
6. Interdiction à l'employeur de diminuer la rétribution afin d'atteindre l'équité salariale. (Paragraphe 9 (1))
7. Interdiction d'intimider les personnes qui demandent l'application de la loi, qui participent ou pourraient participer à une instance relative à l'exécution de la loi. (Paragraphe 9 (2))
8. Obligation pour tous les employeurs du secteur public, et pour les employeurs du secteur privé qui ont au moins 100 employés à leur service, d'élaborer et de mettre en oeuvre des programmes d'équité salariale. Les employeurs du secteur privé qui ont plus de neuf et moins de 100 employés peuvent élaborer et mettre en oeuvre un programme d'équité salariale, mais ne sont pas obligés de le faire. (Parties II et III)
9. Dates limites différentes selon les différentes catégories d'employeurs pour atteindre l'équité salariale. (Alinéa 13 (2) e))
10. Rajustements plus importants pour les employés des catégories d'emplois à prédominance féminine dont le salaire est le plus bas. (Paragraphe 13 (3))
11. Obligation pour tous les employeurs d'effectuer des rajustements annuels de la rétribution équivalant à au moins 1 pour cent de leur feuille de paie pour l'année précédente, jusqu'à ce que l'équité salariale soit atteinte. (Paragraphes 13 (4) et (5))
12. Établissement d'une période de sept ans à la fin de laquelle les employeurs du secteur public devront avoir atteint l'équité salariale. (Paragraphe 13 (7))
13. Les programmes d'équité salariale lient l'employeur, les employés de l'employeur et leur agent négociateur, le cas échéant. (Paragraphe 13 (9))
14. Négociation d'un programme d'équité salariale relié à une unité de négociation entre l'employeur et l'agent négociateur des employés de l'unité de négociation. (Article 14)

15. The employer will prepare the pay equity plan for employees who are not in a bargaining unit. (Subsection 14 (8) and section 15)
16. Review officers will investigate and attempt to settle pay equity plans where an employer or an employer and a bargaining agent are unable to prepare a pay equity plan by the mandatory posting date (a defined term). Review officers will have the power to settle outstanding matters by order. (Section 16)
17. A pay equity plan shall be deemed to have been approved by the Commission if no objections are filed with the Commission. (Subsections 15 (8) and 16 (5))
18. Small private sector employers will have a transition period before they have to comply with the Act with respect to existing compensation practices in existing establishments (a defined term). (Section 21)
19. The Pay Equity Commission of Ontario is established and will consist of the Pay Equity Office and the Pay Equity Hearings Tribunal. The Pay Equity Office will be responsible for administrative and enforcement matters. The Hearings Tribunal will be responsible for the hearing objections and complaints. (Sections 17, 22, 27 and 33)
20. Fines may be imposed for contraventions of certain provisions of the Act and orders of the Hearings Tribunal. (Section 26)
21. Review officers will be appointed to investigate objections and complaints and to monitor the preparation and implementation of pay equity plans. (Section 35)
22. Provision is made for a review of the Act beginning seven years after the effective date. (Section 37)

15. Élaboration par l'employeur d'un programme d'équité salariale à l'intention des employés qui n'appartiennent pas à une unité de négociation. (Paragraphe 14 (8) et article 15)
16. Des agents de révision mènent des enquêtes et tentent d'amener les parties à accepter un règlement lorsqu'un employeur ou un employeur et un agent négociateur ne peuvent élaborer un programme d'équité salariale à la date d'affichage obligatoire (terme défini). Les agents de révision ont le pouvoir de régler au moyen d'un ordre les questions en souffrance. (Article 16)
17. Approbation réputée d'un plan d'équité salariale par la Commission en l'absence d'oppositions déposées auprès de celle-ci. (Paragraphe 15 (8) et 16 (5))
18. Période de transition accordée aux petits employeurs du secteur privé avant qu'ils ne soient tenus de se conformer à la loi en ce qui concerne les pratiques existantes de rétribution dans leurs établissements (terme défini) existants. (Article 21)
19. Création de la Commission de l'équité salariale de l'Ontario, qui se compose du Bureau de l'équité salariale et du Tribunal de l'équité salariale. Le Bureau de l'équité salariale est chargé des questions administratives et de l'application de la loi. Le Tribunal entend les oppositions et les plaintes. (Articles 17, 22, 27 et 33)
20. Imposition d'amendes pour les contraventions à certaines dispositions de la loi ou aux ordonnances du Tribunal. (Article 26)
21. Nomination d'agents de révision pour enquêter au sujet des oppositions et des plaintes et pour contrôler l'élaboration et la mise en oeuvre des programmes d'équité salariale. (Article 35)
22. Examen de la loi sept ans après son entrée en vigueur. (Article 37)

Bill 154

1987

An Act to provide
for Pay Equity

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Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario;

Projet de loi 154

1987

Loi portant établissement
de l'équité salariale

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Attendu qu'il est souhaitable que des mesures concrètes
soient prises aux fins d'éliminer la discrimination fondée sur le
sexe en matière de rétribution des employés oeuvrant dans
des catégories d'emplois à prédominance féminine en Ontario;

Préambule

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

General

Definitions

1.—(1) In this Act,

“agent
négociateur”
R.S.O. 1980,
c. 228

“bargaining agent” means a trade union as defined in the *Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees;

“convention
collective”

“collective agreement” means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment;

“Commis-
sion”

“Commission” means the Pay Equity Commission of Ontario established by this Act;

“rétribution”

“compensation” means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount;

“date
d’entrée
en vigueur”

“effective date” means the day this Act comes into force;

“employé”

“employee” does not include a student employed for his or her vacation period;

“éta-
blisse-
ment”

“establishment” means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15;

“catégorie
d’emplois à
prédominance
féminine”

“female job class” means, except where there has been a decision that a job class is a male job class as described in clause (b) of the definition of “male job class”,

- (a) a job class in which 60 per cent or more of the members are female,

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

PARTIE I

Dispositions générales

1 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

«agent de révision» Personne désignée comme agent de révision aux termes du paragraphe 34 (1). «review officer»

«agent négociateur» S'entend d'un syndicat au sens de la *Loi sur les relations de travail*, en sa qualité d'agent négociateur exclusif aux termes de cette loi à l'égard d'une ou de plusieurs unités de négociation au sein d'un établissement. S'entend en outre d'une organisation qui représente des employés auxquels s'applique la présente loi, si cette organisation est titulaire de droits exclusifs de négociation en vertu d'une autre loi à l'égard de ces employés. «bargaining agent»
L.R.O. 1980, chap. 228

«catégorie d'emplois» Les postes qui présentent, au sein d'un établissement, des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution, un même niveau de salaire ou une même gamme de taux de salaire. «job class»

«catégorie d'emplois à prédominance féminine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance masculine telle que décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance masculine» : «female job class»

- a) d'une catégorie d'emplois dont 60 pour cent ou plus des membres sont des femmes;
- b) d'une catégorie d'emplois qu'un agent de révision ou que le Tribunal décide de désigner comme catégorie d'emplois à prédominance féminine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance féminine.

«catégorie d'emplois à prédominance masculine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine telle que «male job class»

- (b) a job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class;

“zone
géogra-
phique”

“geographic division” means,

R.S.O. 1980,
c. 497

- (a) a county, territorial district or regional municipality described in the *Territorial Division Act*,

- (b) The Municipality of Metropolitan Toronto,

and for the purposes of this Act, the Territorial District of Sudbury and The Regional Municipality of Sudbury shall be considered to be one geographic division;

“Tribunal”

“Hearings Tribunal” means the Pay Equity Hearings Tribunal established by this Act;

“catégorie
d’emplois”

“job class” means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates;

“taux de
catégorie”

“job rate” means the highest rate of compensation for a job class;

“catégorie
d’emplois à
prédominance
masculine”

“male job class” means, except where there has been a decision that a job class is a female job class as described in clause (b) of the definition of “female job class”,

- (a) a job class in which 70 per cent or more of the members are male, or

- (b) a job class that a review officer or the Hearings Tribunal decides is a male job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a male job class;

“ministre”

“Minister” means the Minister of Labour;

“programme
d’équité
salariale”

“pay equity plan” means a document as described in section 13;

décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance féminine» :

- a) d'une catégorie d'emplois dont 70 pour cent ou plus des membres sont des hommes;
- b) – d'une catégorie d'emplois qu'un agent de révision ou que le Tribunal décide de désigner comme catégorie d'emplois à prédominance masculine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance masculine.

«Commission» La Commission de l'équité salariale de l'Ontario créée par la présente loi. «Commission»

«convention collective» Convention écrite conclue entre un employeur et un agent négociateur et qui traite des conditions d'emploi. «collective agreement»

«date d'entrée en vigueur» Le jour de l'entrée en vigueur de la présente loi. «effective date»

«employé» Sont exclus les étudiants employés pendant leurs vacances. «employee»

«établissement» Tous les employés d'un employeur employés dans une même zone géographique ou des zones géographiques convenues aux termes de l'article 14 ou déterminées aux termes de l'article 15. «establishment»

«ministre» Le ministre du Travail. «Minister»

«programme d'équité salariale» Document décrit à l'article 13. «pay equity plan»

«règlements» Les règlements pris en application de la présente loi. «regulations»

«rétribution» Tous les paiements et avantages versés ou accordés à la personne qui exerce des fonctions lui donnant droit au versement d'une somme fixe ou vérifiable, ou au profit de cette personne. «compensation»

«secteur privé» Tous les employeurs qui ne font pas partie du secteur public. «private sector»

«secteur public» Tous les employeurs qui sont mentionnés à l'annexe. «public sector»

- "secteur privé" "private sector" means all of the employers who are not in the public sector;
- "secteur public" "public sector" means all of the employers who are referred to in the Schedule;
- "règlements" "regulations" means the regulations made under this Act;
- "agent de révision" "review officer" means a person designated as a review officer under subsection 34 (1).
- Posting (2) Where this Act requires that a document be posted in the work place, the employer shall post a copy of the document in prominent places in each work place for the establishment to which the document relates in such a manner that it may be read by all of the employees in the work place.
- Idem (3) The employer shall provide a copy of every document posted in the work place under this Act,
- (a) to the bargaining agent, if any, that represents the employees who are affected by the document;
 - (b) to any employee who requests a copy of the document, if the employee is not represented by a bargaining agent and the employee is affected by the document.
- Calculation of number of employees (4) If Part II or III applies to an employer, a reference in this Act to the number of employees of the employer shall be deemed to be a reference to the average number of employees employed in Ontario by the employer during the twelve-month period preceding the effective date or during the period from the day the first employee commenced employment in Ontario with the employer until the effective date, whichever period is shorter.
- Decisions re job classes (5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of

«taux de catégorie» Taux de rétribution le plus élevé relié à une catégorie d'emplois donnée. «job rate»

«Tribunal» Le Tribunal de l'équité salariale créé par la présente loi. «Hearings Tribunal»

«zone géographique» S'entend : «geographic division»

- a) d'un comté, d'un district territorial ou d'une municipalité régionale au sens de la *Loi sur la division territoriale*; L.R.O. 1980, chap. 497
- b) de la municipalité de la communauté urbaine de Toronto.

Pour l'application de la présente loi, le district territorial de Sudbury et la municipalité régionale de Sudbury sont considérés comme formant une seule zone géographique.

(2) Lorsque la présente loi exige l'affichage d'un écrit sur les lieux de travail, l'employeur en affiche un exemplaire dans des endroits bien en vue dans chaque lieu de travail de l'établissement auquel se rapporte l'écrit, de façon que tous les employés puissent le consulter. Affichage

(3) L'employeur fournit une copie de chaque écrit affiché sur les lieux de travail aux termes de la présente loi : Idem

- a) à l'agent négociateur, le cas échéant, qui représente les employés qui sont concernés par l'écrit;
- b) à tout employé qui demande une copie de l'écrit, si cet employé n'est pas représenté par un agent négociateur et que l'employé est concerné par l'écrit.

(4) Si les parties II ou III s'appliquent à un employeur, la mention dans la présente loi du nombre d'employés de l'employeur est réputée une mention du nombre moyen d'employés de l'employeur en Ontario au cours de la plus courte des périodes suivantes : soit la période de douze mois qui précède la date d'entrée en vigueur, soit la période qui se situe entre la date du début en Ontario de l'emploi, au service de l'employeur, du premier employé et la date d'entrée en vigueur. Calcul du nombre d'employés

(5) Aux fins de décider si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, ou de convenir de la prédominance d'une catégorie d'emplois, il est tenu compte du sexe des personnes qui exercent traditionnellement ces Détermination de la catégorie d'emplois

work and such other criteria as may be prescribed by the regulations.

One-member
job classes

(6) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule, salary grade or range of salary rates are not similar to those of any other position in the establishment.

Disabled,
etc.,
not to be
classified
separately

(7) A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties and responsibilities, require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates only because the needs of the occupant of the position have been accommodated for the purpose of complying with the *Human Rights Code, 1981*.

1981, c. 53

Combined
establish-
ments

2.—(1) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Idem

(2) Two or more employers who are municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining agent, the employees, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Employers
to implement
plans

(3) Notwithstanding that the employees of two or more employers are considered to be one establishment under subsection (1) or (2), each employer is responsible for implementing and maintaining the pay equity plan with respect to the employer's employees.

Application

3.—(1) This Act applies to all employers in the private sector in Ontario who employ ten or more employees, all employers in the public sector, the employees of employers to whom this Act applies and to their bargaining agents, if any.

emplois, des stéréotypes sexuels attachés à des domaines d'emplois, ainsi que des autres critères qui peuvent être prescrits par les règlements.

(6) Une catégorie d'emplois peut ne comprendre qu'un seul poste, si celui-ci est d'un caractère unique au sein de l'établissement en raison du fait que les fonctions, les responsabilités, les qualités requises, les procédures de recrutement ou la grille de rétribution, le niveau de salaire ou la gamme de taux de salaire qui lui sont reliés ne sont pas semblables à ceux qui sont reliés aux autres postes au sein de l'établissement.

Catégorie d'emplois à membre unique

(7) Un poste ne doit pas, uniquement à cause du fait qu'il a été tenu compte des besoins de son titulaire afin d'observer le *Code des droits de la personne* (1981), être placé dans une catégorie d'emplois différente de celle d'autres postes du même établissement qui présentent des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution, un même niveau de salaire ou une même gamme de taux de salaire.

Interdiction de classer les personnes handicapées, etc., séparément 1981, chap. 53

2 (1) Lorsque deux employeurs ou plus rencontrent l'agent négociateur ou les agents négociateurs de leurs employés en vue de négocier une convention centrale, ils peuvent convenir qu'aux fins d'un programme d'équité salariale, tous les employés ne constituent qu'un seul établissement et tous les employeurs sont réputés un seul employeur.

Établissements combinés

(2) Deux employeurs ou plus qui sont des municipalités situées dans la même zone géographique et l'agent négociateur ou les agents négociateurs de leurs employés, ou, s'il n'y a pas d'agent négociateur, les employés, peuvent convenir qu'aux fins d'un programme d'équité salariale, les employés ne constituent qu'un seul établissement, et les employeurs sont réputés un seul employeur.

Idem

(3) Malgré le fait que des employés de deux ou plusieurs employeurs sont réputés ne constituer qu'un seul établissement aux termes du paragraphe (1) ou (2), chaque employeur est responsable de la mise en oeuvre et du maintien du programme d'équité salariale visant les employés de l'employeur.

Les employeurs responsables des programmes

3 (1) La présente loi s'applique à tous les employeurs du secteur privé en Ontario qui emploient dix employés ou plus, à tous les employeurs du secteur public, aux employés des employeurs auxquels s'applique la présente loi, ainsi qu'aux agents négociateurs de ces employés, le cas échéant.

Champ d'application

Idem

(2) If at any time after the coming into force of this Act an employer employs ten or more employees in Ontario, this Act applies with respect to the employer although the number of employees is subsequently reduced to fewer than ten.

Purpose

4.—(1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

Identification
of systemic
gender dis-
crimination

(2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed.

Value
determination

5.—(1) For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.

Idem,
disabled
employees,
etc.
1981, c. 53

(2) The fact that an employee's needs have been accommodated for the purpose of complying with the *Human Rights Code, 1981* shall not be considered in determining the value of work performed.

Achievement
of pay equity

6.—(1) For the purposes of this Act, pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value.

Idem

(2) Where there is no male job class with which to make a comparison for the purposes of subsection (1), pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate of a male job class in the same establishment that at the time of comparison had a higher job rate but performs work of lower value than the female job class.

Basis of
comparison

(3) If more than one comparison is possible between a female job class in an establishment and male job classes in the same establishment, pay equity is achieved when the job

(2) Lorsqu'un employeur emploie dix employés ou plus en Ontario après l'entrée en vigueur de la présente loi, celle-ci s'applique à lui, même si le nombre de ses employés est par la suite réduit à moins de dix. Idem

4 (1) La présente loi a pour objet d'éliminer la discrimination systémique entre les sexes, en ce qui concerne la rétribution du travail effectué par les employés dans les catégories d'emplois à prédominance féminine. Objet

(2) Le repérage de la discrimination systémique entre les sexes en ce qui concerne la rétribution se fait au moyen de comparaisons établies entre chacune des catégories d'emplois à prédominance féminine et les catégories d'emplois à prédominance masculine dans un même établissement au niveau de la rétribution et de la valeur du travail accompli. Repérage de la discrimination systémique entre les sexes

5 (1) Pour l'application de la présente loi, le critère qui sert à déterminer la valeur du travail se fonde sur l'habileté, l'effort et la responsabilité qu'exige normalement l'accomplissement de ce travail, ainsi que sur les conditions dans lesquelles il est normalement effectué. Détermination de la valeur

(2) Le fait qu'il a été tenu compte des besoins d'un employé afin d'observer le *Code des droits de la personne (1981)* n'est pas pris en considération dans la détermination de la valeur du travail effectué. Idem, personnes handicapées, etc.
1981, chap. 53

6 (1) Pour l'application de la présente loi, l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie relié à une catégorie d'emplois à prédominance masculine dans le même établissement, si le travail effectué au niveau des deux catégories est de valeur égale ou comparable. Équité salariale atteinte

(2) S'il n'existe aucune catégorie d'emplois à prédominance masculine avec laquelle peut être établie une comparaison pour l'application du paragraphe (1), l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie d'une catégorie d'emplois à prédominance masculine du même établissement qui avait, au moment de la comparaison, un taux de catégorie supérieur, mais qui effectue un travail d'une valeur inférieure à celui de la catégorie d'emplois à prédominance féminine. Idem

(3) Si une catégorie d'emplois à prédominance féminine dans un établissement et des catégories d'emplois à prédominance masculine dans le même établissement se prêtent à plusieurs comparaisons, l'équité salariale est atteinte lorsque le Fondement de la comparaison

rate for the female job class is at least as great as the job rate for the male job class,

- (a) with the lowest job rate, if the work performed in both job classes is of equal or comparable value; or
- (b) with the highest job rate, if the work performed in the male job class is of less value.

Idem

(4) Comparisons required by this Act,

- (a) for job classes inside a bargaining unit, shall be made between job classes in the bargaining unit; and
- (b) for job classes outside any bargaining unit, shall be made between job classes that are outside any bargaining unit.

Idem

(5) If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment.

Groups
of jobs

(6) An employer may treat job classes that are arranged in a group of jobs as one female job class if 60 per cent or more of the employees in the group are female.

Idem

(7) An employer shall treat job classes that are arranged in a group of jobs as one female job class if a review officer or the Commission decides that the group should be treated as one female job class.

Idem

(8) An employer may, with the agreement of the bargaining agent, if any, for the employees of the employer, decide to treat job classes that are arranged in a group of jobs as one female job class.

taux de catégorie relié à la catégorie d'emplois à prédominance féminine est au moins égal au taux de catégorie relié à la catégorie d'emplois à prédominance masculine :

- a) qui a le taux de catégorie le plus bas, si le travail effectué dans les deux catégories d'emplois est de valeur égale ou comparable;
- b) qui a le taux de catégorie le plus élevé, si le travail effectué dans la catégorie d'emplois à prédominance masculine est de valeur inférieure.

(4) Les comparaisons exigées par la présente loi sont établies : Idem

- a) entre des catégories d'emplois qui appartiennent à l'unité de négociation, en ce qui concerne les catégories d'emplois appartenant à une unité de négociation;
- b) entre des catégories d'emplois qui n'appartiennent à aucune unité de négociation, en ce qui concerne les catégories d'emplois n'appartenant pas à une unité de négociation.

(5) Lorsque, après l'application du paragraphe (4), il ne se trouve aucune catégorie d'emplois à prédominance masculine dans laquelle s'effectue un travail de valeur égale ou comparable au travail qui s'effectue dans la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison, celle-ci est comparée aux catégories d'emplois à prédominance masculine de l'ensemble de l'établissement. Idem

(6) L'employeur peut traiter des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine si 60 pour cent ou plus des employés du groupe sont des femmes. Groupes d'emplois

(7) L'employeur traite des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine si un agent de révision ou la Commission décide que le groupe doit être traité comme une catégorie d'emplois à prédominance féminine. Idem

(8) L'employeur peut, avec l'assentiment de l'agent négociateur des employés de l'employeur, le cas échéant, décider de traiter des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine. Idem

Job rate,
value of
work

(9) Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group and the value of the work performed by that individual job class is the value of the work performed by the group.

Definition
"groupe
d'emplois"

(10) In this section, "group of jobs" means a series of job classes that bear a relationship to each other because of the nature of the work required to perform the work of each job class in the series and that are organized in successive levels.

Pay equity
required

7.—(1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

Idem

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1).

Exclusions
from
determination

8.—(1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

- (a) a formal seniority system that does not discriminate on the basis of gender;
- (b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
- (c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
- (d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or

(9) Lorsque l'employeur traite un groupe d'emplois comme une catégorie d'emplois à prédominance féminine, le taux de catégorie de la catégorie d'emplois particulière au sein du groupe qui comporte le plus grand nombre d'employés est le taux de catégorie de ce groupe. La valeur du travail effectué par la catégorie particulière est la valeur du travail effectué par le groupe.

Taux de
catégorie,
valeur du
travail

(10) Dans le présent article, «groupe d'emplois» s'entend d'une série de catégories d'emplois qui sont reliées entre elles en raison de la nature des tâches que comporte chaque catégorie d'emplois de la série, et réparties en grades consécutifs.

Définition
«group of
jobs»

7 (1) L'employeur établit et maintient des pratiques de rétribution assurant l'équité salariale dans chacun de ses établissements.

Équité
salariale
obligatoire

(2) Il est interdit à l'employeur et à l'agent négociateur de négocier en vue d'obtenir l'établissement ou le maintien de pratiques de rétribution qui, si elles étaient adoptées, entraîneraient une contravention au paragraphe (1). Il leur est également interdit de convenir de telles pratiques.

Idem

8 (1) La présente loi n'a pas pour effet d'empêcher un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine, si l'employeur peut démontrer que l'écart résulte :

Exceptions

- a) d'un système organisé d'ancienneté exempt de discrimination fondée sur le sexe;
- b) d'un programme d'affectations temporaires de formation ou de perfectionnement des employés dont peuvent se prévaloir également les employés féminins et les employés masculins et qui mène à l'avancement de ceux qui y participent;
- c) d'un régime de rétribution au mérite fondé sur un système organisé d'évaluation du rendement préalablement porté à la connaissance des employés et exempt de discrimination fondée sur le sexe;
- d) de la pratique de gestion du personnel dite du «salaire étoilé» lorsque, à la suite d'un processus non sexiste de réévaluation, un poste a été déclassé et que la rétribution de l'employé a été bloquée ou que toute augmentation de sa rétribution a été suspendue jusqu'à ce que la rétribution reliée au poste déclassé devienne égale ou supérieure à la rétribution de l'employé;

- (e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Idem

(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

Idem

(3) A position that an employer designates as a position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a pay equity plan.

Idem

(4) A position shall not be designated under subsection (3) if,

- (a) the work is performed for at least one-third of the normal work period that applies to similar full-time work;
- (b) the work is performed on a seasonal basis in the same position for the same employer; or
- (c) the work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work.

Reduction of
compensation
prohibited

9.—(1) An employer shall not reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve pay equity.

Intimidation
prohibited

(2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

- (a) because the person may participate, or is participating, in a proceeding under this Act;

- e) de l'absence de main-d'oeuvre qualifiée qui engendre une inflation temporaire de la rétribution provoquée par la difficulté qu'éprouve l'employeur à recruter des employés satisfaisant aux exigences des postes au sein d'une catégorie d'emplois.

(2) Lorsque l'équité salariale est atteinte dans un établissement, la présente loi n'a pas pour effet d'empêcher des écarts de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine si l'employeur peut démontrer que l'écart résulte de différences au niveau du pouvoir de négociation. Idem

(3) Aux fins de déterminer si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, il n'est pas nécessaire de tenir compte des postes que l'employeur désigne comme postes qui procurent de l'emploi occasionnel. Les postes ainsi désignés peuvent également être exclus lors des rajustements de la rétribution effectués en vertu d'un programme d'équité salariale. Idem

(4) Un poste n'est pas désigné aux termes du paragraphe (3) si, selon le cas : Idem

- a) la durée du travail est égale ou supérieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps;
- b) le travail est effectué sur une base saisonnière pour le compte du même employeur et dans le cadre du même poste;
- c) le travail est effectué sur une base régulière et continue, quoique durant une période inférieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps.

9 (1) L'employeur ne doit pas diminuer la rétribution payable à un employé ni réduire le taux de rétribution rattaché à un poste afin d'atteindre l'équité salariale. Réduction de la rétribution interdite

(2) Il est interdit à l'employeur, à l'employé, à l'agent négociateur, ainsi qu'à leurs mandataires d'intimider, de contraindre, de pénaliser une personne ou d'exercer une discrimination à son égard pour l'un des motifs suivants : Manoeuvres d'intimidation interdites

- a) elle participe ou pourrait participer à une instance intentée en vertu de la présente loi;

- (b) because the person has made, or may make, a disclosure required in a proceeding under this Act;
- (c) because the person is exercising, or may exercise, any right under this Act; or
- (d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.

Compensation
adjustments

(3) Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms.

PART II

Implementation: Public Sector and Large Private Sector Employers

Definition
“date
d’affichage
obligatoire”

10. In this Part, “mandatory posting date” means,

- (a) the second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date;
- (b) the third anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date;
- (c) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20; and
- (d) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least

- b) elle a déjà fait ou pourrait faire une divulgation exigée lors d'une instance intentée en vertu de la présente loi;
- c) elle exerce ou pourrait exercer un droit en vertu de la présente loi;
- d) elle a déjà agi ou pourrait agir conformément à la présente loi, aux règlements ou à un ordre ou une ordonnance pris en vertu de la présente loi, ou a déjà demandé ou pourrait demander l'exécution de la présente loi, des règlements ou d'un ordre ou d'une ordonnance pris en vertu de la présente loi.

(3) S'il est nécessaire d'augmenter le taux de rétribution d'une catégorie d'emplois afin d'atteindre l'équité salariale, tous les postes dans cette catégorie d'emplois reçoivent le même taux de rajustement, en termes absolus.

Rajustements
de la
rétribution

PARTIE II

Mise en oeuvre : employeurs du secteur public et grands
employeurs du secteur privé

10 Dans la présente partie, «date d'affichage obligatoire» s'entend :

Définition
«mandatory
posting
date»

- a) du deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur public et en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur;
- b) du troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur;
- c) du quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20;
- d) du cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cin-

ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Application

11.—(1) This Part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees and those employers in the private sector who post a notice under section 20.

Idem

(2) This Part does not apply to an employer who does not have employees on the effective date.

Comparison
of
job classes

12. Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class.

Pay equity
plans
required

13.—(1) Documents, to be known as pay equity plans, shall be prepared in accordance with this Part to provide for pay equity for the female job classes in each establishment of every employer to whom this Part applies and, without restricting the generality of the foregoing,

- (a) shall identify the establishment to which the plan applies; and
- (b) shall identify all job classes which formed the basis of the comparisons under section 12.

Idem

(2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment,

- (a) shall describe the gender-neutral comparison system used for the purposes of section 12;
- (b) shall set out the results of the comparisons carried out under section 12;
- (c) shall identify all positions and job classes in which differences in compensation are permitted by sub-

quante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20.

11 (1) La présente partie s'applique à tous les employeurs du secteur public et aux employeurs du secteur privé qui, à la date d'entrée en vigueur, ont 100 employés ou plus à leur service, ainsi qu'aux employeurs du secteur privé qui affichent l'avis visé à l'article 20.

Champ
d'application

(2) La présente partie ne s'applique pas à l'employeur qui, à la date d'entrée en vigueur, n'a aucun employé à son service.

Idem

12 Avant la date d'affichage obligatoire, l'employeur auquel s'applique la présente partie établit des comparaisons, au moyen d'un système non sexiste de comparaison, entre les catégories d'emplois à prédominance féminine de chacun de ses établissements et les catégories d'emplois à prédominance masculine des mêmes établissements aux fins de déterminer si l'équité salariale existe à l'égard de chaque catégorie d'emplois à prédominance féminine.

Comparaison
des catégories
d'emplois

13 (1) Il est élaboré, conformément à la présente partie, des documents connus sous l'appellation de programmes d'équité salariale, visant à assurer l'équité salariale à l'égard des catégories d'emplois à prédominance féminine au sein de chacun des établissements de chaque employeur auquel s'applique la présente partie. Ces programmes comprennent notamment :

Programmes
obligatoires
d'équité
salariale

- a) le repérage de l'établissement visé par le programme;
- b) le repérage de toutes les catégories d'emplois sur lesquelles se fondent les comparaisons visées à l'article 12.

(2) Si un établissement comporte à la fois des catégories d'emplois à prédominance féminine et des catégories d'emplois à prédominance masculine, chaque programme d'équité salariale relatif à l'établissement :

Idem

- a) expose le système non sexiste de comparaison utilisé pour l'application de l'article 12;
- b) énonce les résultats des comparaisons établies aux termes de l'article 12;
- c) repère tous les postes et toutes les catégories d'emplois dans lesquels les paragraphes 8 (1) ou (3) per-

section 8 (1) or (3) and give the reasons for relying on such subsection;

- (d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 12, describe how the compensation in those job classes will be adjusted to achieve pay equity; and
- (e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,
 - (i) the second anniversary of the effective date, in respect of employers in the public sector,
 - (ii) the third anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date,
 - (iii) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,
 - (iv) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and
 - (v) the sixth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Idem

(3) A pay equity plan shall provide that the female job class or classes that have, at any time during the implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until

mettent des écarts de rétribution, et donne les motifs du recours à ces paragraphes;

- d) expose, à l'égard de toutes les catégories d'emplois à prédominance féminine où l'équité salariale n'existe pas selon les comparaisons établies aux termes de l'article 12, le mode de rajustement de la rétribution choisi pour atteindre l'équité salariale;
- e) énonce la date à laquelle seront effectués les premiers rajustements de la rétribution en vertu du programme. Cette date ne peut être postérieure :
 - (i) au deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur public,
 - (ii) au troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur,
 - (iii) au quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur,
 - (iv) au cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20,
 - (v) au sixième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cinquante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20.

(3) Un programme d'équité salariale prévoit qu'il sera accordé à la catégorie ou aux catégories d'emplois à prédominance féminine qui ont, pendant la période de mise en oeuvre du programme, le taux de catégorie le plus bas, une augmentation du taux de rétribution aux termes du programme qui est supérieure aux augmentations accordées aux termes du programme aux autres catégories d'emplois à prédominance féminine, jusqu'à ce que le taux de catégorie de la catégorie

Idem

such time as the job rate for the female job class or classes receiving the greater increases is equal to the lesser of,

- (a) the job rate required to achieve pay equity; and
- (b) the job rate of the female job class or classes entitled to receive an adjustment under the plan with the next lowest job rate.

Minimum
adjustments

(4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2) (e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and
- (b) the amount required to achieve pay equity.

Idem

(5) Adjustments shall be made in compensation under a pay equity plan on each anniversary of the first adjustments in compensation under the plan and shall be such that during the twelve-month period following each anniversary the combined compensation payable under all pay equity plans of the employer shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the anniversary; and
- (b) the amount required to achieve pay equity.

Maximum
adjustments

(6) Except for the purpose of making retroactive adjustments in compensation under a pay equity plan or unless

ou des catégories d'emplois à prédominance féminine qui reçoivent l'augmentation supérieure soit égal au moins élevé des taux suivants :

- a) le taux de catégorie nécessaire pour atteindre l'équité salariale;
- b) le taux de catégorie de la catégorie ou des catégories d'emplois à prédominance féminine ayant droit à un rajustement aux termes du programme et dont le taux de catégorie se classe immédiatement au-dessus de celui de la catégorie ou des catégories d'emplois visées.

(4) Les premiers rajustements de la rétribution en vertu d'un programme d'équité salariale sont versables à la date prévue à l'alinéa (2) e) et sont tels que la rétribution combinée payable aux termes de l'ensemble des programmes d'équité salariale de l'employeur au cours des douze mois qui suivent les premiers rajustements est majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

Rajustements
minimaux

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède les premiers rajustements;
- b) la somme nécessaire pour atteindre l'équité salariale.

(5) Chaque anniversaire des premiers rajustements de la rétribution en vertu d'un programme d'équité salariale, des rajustements à la rétribution sont effectués en vertu du programme. Ces rajustements additionnels sont effectués de façon que la rétribution combinée payable aux termes de l'ensemble des programmes d'équité salariale de l'employeur au cours de la période de douze mois qui suit chaque anniversaire soit majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

Idem

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède l'anniversaire;
- b) la somme nécessaire pour atteindre l'équité salariale.

(6) Sauf dans le but d'effectuer des rajustements rétroactifs à la rétribution en vertu d'un programme d'équité salariale ou

Rajustements
maximaux

required to do so by an order described in clause 36 (g), nothing in this Act requires an employer to increase compensation payable under the pay equity plans of the employer during a twelve-month period in an amount greater than 1 per cent of the employer's payroll during the preceding twelve-month period.

Exception

(7) Notwithstanding subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the seventh anniversary of the effective date.

Definition
"feuille de
paie"

(8) In this section, "payroll" means the total of all wages and salaries payable to the employees in Ontario of the employer.

Pay equity
plan binding

(9) A pay equity plan that is approved under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to
prevail

(10) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Deemed
compliance

(11) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the effective date.

Establish-
ments with
bargaining
units

14.—(1) In an establishment in which any of the employees are represented by a bargaining agent, there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit.

Bargaining
unit plans

(2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,

- (a) the gender-neutral comparison system used for the purposes of section 12; and

à moins qu'il y soit tenu aux termes d'une ordonnance visée à l'alinéa 36 g), la présente loi n'a pas pour effet d'obliger un employeur à majorer la rétribution payable aux termes des programmes d'équité salariale de l'employeur au cours d'une période de douze mois d'une somme qui représente plus de 1 pour cent de la feuille de paie de l'employeur relative à la période précédente de douze mois.

(7) Malgré le paragraphe (6), les programmes d'équité salariale du secteur public prévoient les rajustements de la rétribution de manière à ce que ces programmes soient pleinement mis en oeuvre au plus tard le septième anniversaire de la date d'entrée en vigueur.

Exception

(8) Dans le présent article, «feuille de paie» s'entend de la totalité des salaires et traitements payables aux employés de l'employeur en Ontario.

Définition
«payroll»

(9) Le programme d'équité salariale approuvé aux termes de la présente partie lie l'employeur et les employés auxquels il s'applique, ainsi que leur agent négociateur, le cas échéant.

Le programme d'équité salariale lie les parties

(10) Le programme d'équité salariale approuvé aux termes de la présente partie l'emporte sur toute convention collective pertinente. Les rajustements des taux de rétribution qu'exige le programme sont réputés incorporés aux conventions collectives pertinentes et en faire partie intégrante.

Le programme l'emporte

(11) L'employeur qui prépare et met en oeuvre un programme d'équité salariale aux termes de la présente partie est réputé ne pas contrevenir au paragraphe 7 (1) en ce qui concerne les employés visés par le plan ou les plans qui s'appliquent aux employés, mais seulement en ce qui a trait aux pratiques de rétribution qui existaient immédiatement avant la date d'entrée en vigueur.

Conformité
réputée

14 (1) Il doit être élaboré, dans tout établissement où des employés sont représentés par un agent négociateur, un programme d'équité salariale relié à chaque unité de négociation, ainsi qu'un programme d'équité salariale relié à la partie de l'établissement dont les membres n'appartiennent pas à une unité de négociation.

Établissements dotés d'unités de négociation

(2) L'employeur et l'agent négociateur d'une unité de négociation négocient de bonne foi et s'efforcent de convenir, avant à la date d'affichage obligatoire :

Programmes reliés à une unité de négociation

- a) du système non sexiste de comparaison utilisé pour l'application de l'article 12;

(b) a pay equity plan for the bargaining unit.

Idem

(3) As part of the negotiations required by subsection (2), the employer and the bargaining agent may agree, for the purposes of the pay equity plan,

(a) that the establishment of the employer includes two or more geographic divisions; and

(b) that a job class is a female job class or a male job class.

Posting
of plan

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the work place.

Deemed
approval and
first
adjustments

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Failure
to agree

(6) Where an employer and a bargaining agent fail to agree on a pay equity plan by the mandatory posting date, the employer, forthwith after that date, shall give notice of the failure to the Commission.

Idem

(7) Subsection (6) does not prevent the bargaining agent from notifying the Commission of a failure to agree on a pay equity plan by the mandatory posting date.

Non-
bargaining
unit plan

(8) An employer shall prepare a pay equity plan for that part of the employer's establishment that is outside any bargaining unit in the establishment and, on or before the mandatory posting date, shall post a copy of the plan in the work place.

Idem

(9) Subsections 15 (2) to (8) apply to a pay equity plan described in subsection (8).

Establish-
ments
without
bargaining
units

15.—(1) In an establishment where no employee is represented by a bargaining agent, the employer shall prepare a pay equity plan for the employer's establishment and the employer, on or before the mandatory posting date, shall post a copy of the plan in the work place.

- b) d'un programme d'équité salariale relié à l'unité de négociation.

(3) Dans le cadre des négociations exigées par le paragraphe (2), l'employeur et l'agent négociateur peuvent, pour les fins du programme d'équité salariale, convenir de ce qui suit :

Idem

- a) que l'établissement de l'employeur comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(4) L'employeur et l'agent négociateur qui ont convenu d'un programme d'équité salariale y apposent leur signature. À la date d'affichage obligatoire ou antérieurement à celle-ci, l'employeur affiche une copie du programme sur les lieux de travail.

Affichage du programme

(5) Le programme d'équité salariale qui porte la signature de l'employeur et celle de l'agent négociateur est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation réputée et premiers rajustements

(6) Si l'employeur et l'agent négociateur n'ont pas convenu d'un programme d'équité salariale à la date d'affichage obligatoire, l'employeur en avise sans délai la Commission.

Absence d'entente

(7) Le paragraphe (6) n'a pas pour effet d'empêcher l'agent négociateur d'aviser la Commission du défaut de convenir d'un programme d'équité salariale à la date d'affichage obligatoire ou antérieurement à celle-ci.

Idem

(8) L'employeur élabore un programme d'équité salariale destiné aux employés de son établissement qui n'appartiennent à aucune des unités de négociation de l'établissement. À la date d'affichage obligatoire ou antérieurement à celle-ci, il affiche une copie du programme sur les lieux de travail.

Programme non relié à une unité de négociation

(9) Les paragraphes 15 (2) à (8) s'appliquent au programme d'équité salariale décrit au paragraphe (8).

Idem

15 (1) L'employeur dont l'établissement ne compte aucun employé représenté par un agent négociateur élabore un programme d'équité salariale à l'égard de son établissement. L'employeur, à la date d'affichage obligatoire ou antérieurement à celle-ci, affiche une copie du programme sur les lieux de travail.

Établissements dépourvus d'unités de négociation

Idem

(2) For the purposes of a pay equity plan required by this section or subsection 14 (8), the employer may decide,

- (a) that the establishment of the employer includes two or more geographic divisions; and
- (b) that a job class is a female job class or a male job class.

Idem

(3) An agreement under section 14 between an employer and a bargaining agent shall not affect any pay equity plan required by this section or subsection 14 (8).

Employee
review

(4) The employees to whom a pay equity plan required by this section or subsection 14 (8) applies shall have until the ninetieth day after the mandatory posting date to review and submit comments to the employer on the plan.

Changes

(5) If as a result of comments received during the review period referred to in subsection (4), the employer is of the opinion that a pay equity plan should be changed, the employer may change the plan.

Posting of
notice

(6) Not later than seven days after the end of the review period referred to in subsection (4), the employer shall post in the work place a notice stating whether the pay equity plan has been amended under this section and, if the plan has been amended, the employer shall also post a copy of the amended plan with the amendments clearly indicated.

Objections

(7) Any employee or group of employees to whom a pay equity plan applies, within thirty days following a posting in respect of the plan under subsection (6), may file a notice of objection with the Commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4).

Deemed
approval
and first
adjustments

(8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

(2) Pour l'application du programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8), l'employeur peut décider :

Idem

- a) que son établissement comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(3) L'entente intervenue en vertu de l'article 14 entre l'employeur et l'agent négociateur n'a pas d'incidence sur le programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8).

Idem

(4) Les employés visés par un programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8) peuvent examiner le programme et présenter leurs observations à l'employeur jusqu'au quatre-vingt-dixième jour suivant la date d'affichage obligatoire.

Examen par l'employé

(5) L'employeur qui, à la suite des observations reçues au cours de la période d'examen visée au paragraphe (4), est d'avis que des modifications au programme d'équité salariale s'imposent, peut y apporter des modifications.

Modification

(6) Dans les sept jours qui suivent la fin de la période d'examen visée au paragraphe (4), l'employeur affiche sur les lieux de travail un avis qui indique si le programme d'équité salariale a été modifié ou non aux termes du présent article. Si le programme a été modifié, l'employeur affiche également une copie du programme modifié sur laquelle les modifications sont clairement indiquées.

Affichage d'un avis

(7) Dans les trente jours de l'affichage concernant un programme d'équité salariale aux termes du paragraphe (6), l'employé ou le groupe d'employés visés par le programme peuvent déposer un avis d'opposition auprès de la Commission, qu'ils aient présenté ou non leurs observations à l'employeur aux termes du paragraphe (4).

Oppositions

(8) S'il n'est déposé aucune opposition à un programme d'équité salariale auprès de la Commission en vertu du paragraphe (7), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation réputée et premiers rajustements

Investigation
by review
officer and
settlement

16.—(1) If the Commission,

- (a) is advised by an employer or a bargaining agent that no agreement has been reached on a pay equity plan under section 14; or
- (b) receives a notice of objection under subsection 15 (7),

a review officer shall investigate the matter and endeavour to effect a settlement.

Orders by
review officer

(2) If the review officer is unable to effect a settlement as provided for in subsection (1), he or she shall, by order, decide all outstanding matters.

Posting of
plan

(3) Where a review officer effects a settlement under subsection (1) or makes an order under subsection (2), the employer shall forthwith post in the work place a copy of the pay equity plan that reflects the settlement or order.

Objections

(4) Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the Commission within thirty days of the posting as follows:

1. If the plan relates to a bargaining unit, objections may be filed only if the review officer has made an order under subsection (2) and only the employer or the bargaining agent for the bargaining unit may file objections.
2. If the plan does not relate to a bargaining unit and a review officer effected a settlement under subsection (1) with the agreement of the objector who filed the objection under subsection 15 (7), only an employee or group of employees to whom the plan applies, other than the objector, may file an objection.
3. If the plan does not relate to a bargaining unit and a review officer has made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection.

16 (1) Lorsque la Commission :Enquête par
l'agent de
révision et
règlement

- a) ou bien est avisée par l'employeur ou l'agent négociateur qu'aucune entente n'est intervenue au sujet du programme d'équité salariale aux termes de l'article 14;
- b) ou bien reçoit l'avis d'opposition visé au paragraphe 15 (7),

un agent de révision mène une enquête à ce sujet et tente d'amener les parties à accepter un règlement.

(2) Si l'agent de révision ne peut parvenir à amener les parties à accepter le règlement visé au paragraphe (1), il règle toutes les questions en souffrance au moyen d'un ordre.

Ordre de
l'agent de
révision

(3) Si l'agent de révision amène les parties à accepter un règlement aux termes du paragraphe (1) ou donne un ordre aux termes du paragraphe (2), l'employeur affiche sans délai sur les lieux de travail une copie du programme d'équité salariale qui reflète le règlement ou l'ordre.

Affichage du
programme

(4) Des oppositions au programme d'équité salariale affiché en vertu du paragraphe (3), peuvent être déposées auprès de la Commission dans les trente jours de l'affichage, selon les modalités suivantes :

Oppositions

1. Si le programme est relié à une unité de négociation, des oppositions peuvent être déposées seulement si l'agent de révision a donné un ordre aux termes du paragraphe (2). Dans ce cas, seuls l'employeur ou l'agent négociateur de l'unité de négociation peuvent déposer une opposition.
2. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a amené, aux termes du paragraphe (1), les parties à accepter un règlement avec le consentement de l'opposant qui a déposé l'opposition aux termes du paragraphe 15 (7), seuls un employé ou le groupe d'employés visés par le programme, autre que l'opposant, peuvent déposer une opposition.
3. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a donné un ordre aux termes du paragraphe (2), l'employeur, un employé ou un groupe d'employés visés par le programme peuvent déposer une opposition.

Deemed
approval
and first
adjustments

(5) If a review officer effects a settlement of a pay equity plan for a bargaining unit under subsection (1) or, if in any other case, no objection in respect of a pay equity plan is filed with the Commission in accordance with subsection (4), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Idem

(6) Where adjustments in compensation are made after the day provided for in the pay equity plan, the employer shall make the adjustments retroactive to that date.

Hearing

17.—(1) If the Commission receives a notice of objection under subsection 16 (4), the Hearings Tribunal shall hold a hearing and, in its decision, shall settle the pay equity plan to which the objection relates.

Posting of
plan

(2) Forthwith after receiving the decision of the Hearings Tribunal, the employer shall post a copy of the decision in the work place and, on the day provided for in the plan, shall make the first adjustments in compensation required to achieve pay equity.

Idem

(3) Where adjustments in compensation are made after the day provided for in a pay equity plan, the employer shall make the adjustments retroactive to that date.

PART III

Implementation: Small Private Sector Employers

Application

18. This Part applies only to employers in the private sector who, on the effective date, employ more than nine and fewer than 100 employees.

Pay equity
plans

19. An employer to whom this Part applies may establish pay equity plans for any of the employer's establishments.

Posting of
notice

20.—(1) An employer who decides to establish a pay equity plan or plans for an establishment, as provided for in section 19, shall give notice of the decision to the bargaining agents, if any, for employees in the establishment and shall post a notice of the decision in the work place.

Application
of Part II

(2) Upon the posting of the notice referred to in subsection (1), Part II applies to the establishment to which the notice relates and this Part ceases to apply to the employer with respect to that establishment.

(5) Si un agent de révision amène les parties à accepter, aux termes du paragraphe (1), un règlement relatif à un programme d'équité salariale relié à une unité de négociation, ou que, dans tout autre cas, aucune opposition n'a été déposée auprès de la Commission au sujet d'un programme d'équité salariale aux termes du paragraphe (4), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation
réputée et
premiers
rajustements

(6) Si des rajustements de la rétribution sont effectués après la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

Idem

17 (1) Si la Commission reçoit un avis d'opposition en vertu du paragraphe 16 (4), le Tribunal tient une audience et règle, dans sa décision, le programme d'équité salariale qui fait l'objet de l'opposition.

Audience

(2) Lorsqu'il reçoit la décision du Tribunal, l'employeur en affiche sans délai une copie sur les lieux de travail. À la date prévue au programme, il effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Affichage du
programme

(3) Si des rajustements de la rétribution sont effectués après la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

Idem

PARTIE III

Mise en oeuvre : petits employeurs du secteur privé

18 La présente partie ne s'applique qu'aux employeurs du secteur privé qui, à la date d'entrée en vigueur, ont à leur service plus de neuf, mais moins de 100 employés.

Champ
d'application

19 L'employeur auquel s'applique la présente partie peut établir des programmes d'équité salariale à l'égard de chacun de ses établissements.

Programme
d'équité
salariale

20 (1) L'employeur qui décide d'établir, aux termes de l'article 19, un ou plusieurs programmes d'équité salariale à l'égard de son établissement, avise de sa décision les agents négociateurs des employés de son établissement, le cas échéant, et affiche un avis de cette décision sur les lieux de travail.

Affichage de
l'avis

(2) Dès que l'employeur affiche l'avis prévu au paragraphe (1), la partie II s'applique à l'établissement visé par l'avis et la présente partie cesse alors de s'appliquer à l'employeur à l'égard de cet établissement.

Cas d'applica-
tion de la
partie II

Transition

21.—(1) Notwithstanding subsection 7 (1) or (2), an employer to whom this Part applies may maintain compensation practices that were in existence in the employer's establishment immediately before the effective date,

- (a) until the fifth anniversary of the effective date, if the employer employs at least fifty but fewer than 100 employees on the effective date; and
- (b) until the sixth anniversary of the effective date, if the employer employs at least ten but fewer than fifty employees on the effective date,

and, until the relevant anniversary date, a compensation change that is the same in percentage terms for female job classes and male job classes in the establishment shall be deemed not to be a contravention of those subsections even though the change is different in dollar terms for a female job class than for a male job class.

Repeal

(2) This Part is repealed on the sixth anniversary of the effective date.

PART IV

Enforcement

Complaints

22.—(1) Any employer, employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

Idem

(2) Any employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining with respect to a pay equity plan that applies to the employee or group of employees that,

- (a) the plan is not being implemented according to its terms; or
- (b) because of changed circumstances in the establishment, the plan is not appropriate for the female job

21 (1) Malgré les paragraphes 7 (1) ou (2), l'employeur auquel s'applique la présente partie peut maintenir les pratiques de rétribution qui avaient cours dans son établissement immédiatement avant la date d'entrée en vigueur :

Disposition
transitoire

- a) jusqu'au cinquième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins cinquante, mais moins de 100 employés à son service à la date d'entrée en vigueur;
- b) jusqu'au sixième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins dix, mais moins de cinquante employés à son service à la date d'entrée en vigueur.

Jusqu'à l'anniversaire pertinent, la modification de la rétribution qui est la même, en termes de pourcentage, à l'égard des catégories d'emplois à prédominance féminine qu'à l'égard des catégories d'emplois à prédominance masculine dans l'établissement, est réputée ne pas contrevenir à ces paragraphes, même si, en termes absolus, la modification qui est faite à l'égard des catégories d'emplois à prédominance féminine diffère de celle qui est faite à l'égard des catégories d'emplois à prédominance masculine.

(2) La présente partie est abrogée le jour du sixième anniversaire de la date d'entrée en vigueur.

Abrogation

PARTIE IV

Exécution de la loi

22 (1) Un employeur, un employé, un groupe d'employés ou, le cas échéant, un agent négociateur qui représente l'employé ou le groupe d'employés, peuvent déposer auprès de la Commission une plainte signalant qu'il y a eu contravention à la présente loi, aux règlements ou à une ordonnance de la Commission.

Plaintes

(2) Un employé, un groupe d'employés ou, le cas échéant, l'agent négociateur qui représente l'employé ou le groupe d'employés, peuvent déposer auprès de la Commission, à l'égard du programme d'équité salariale qui vise cet employé ou ce groupe d'employés, une plainte précisant, selon le cas :

Idem

- a) que la mise en oeuvre du programme ne s'effectue pas conformément à ses modalités;
- b) qu'en raison d'un changement de la situation au sein de l'établissement, le programme ne convient pas à la catégorie d'emplois à prédominance fémi-

class to which the employee or group of employees belongs.

Combining of
complaints

(3) The Hearings Tribunal may combine two or more complaints and deal with them in one proceeding if the complaints,

- (a) are made against the same person and bring into question the same or a similar issue; or
- (b) have questions of law or fact in common.

Investigation
of complaints

23.—(1) Subject to subsection (2), when the Commission receives a complaint, a review officer shall investigate the complaint and may endeavour to effect a settlement.

Idem

(2) The review officer shall notify the parties and the Hearings Tribunal as soon as he or she decides that a settlement cannot be effected and that he or she will not be making an order under subsection 24 (3).

Decision to
not deal with
complaint

(3) A review officer may decide that a complaint should not be considered if the review officer is of the opinion that,

- (a) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (b) the complaint is not within the jurisdiction of the Commission.

Hearing
before
Tribunal

(4) The review officer shall notify the complainant of his or her decision under subsection (3) and the complainant may request a hearing before the Hearings Tribunal with respect to the decision.

Orders by
review
officers

24.—(1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.

Idem

(2) Where a review officer is of the opinion that a pay equity plan is not being implemented according to its terms, the review officer may order the employer to take such steps as are set out in the order to implement the plan.

Idem

(3) Where a review officer is of the opinion that there has been a contravention of subsection 7 (1) or (2), the review officer may order the employer and the bargaining agent, if

nine à laquelle appartiennent l'employé ou le groupe d'employés.

(3) Le Tribunal peut réunir deux ou plusieurs plaintes et en traiter au cours d'une même instance, si ces plaintes, selon le cas :

Réunion de plaintes

- a) sont formulées contre la même personne et se rapportent au même point en litige ou à un point semblable;
- b) soulèvent les mêmes questions de droit ou de fait.

23 (1) Sous réserve du paragraphe (2), un agent de révision mène une enquête concernant la plainte reçue par la Commission et peut tenter d'amener les parties à accepter un règlement.

Enquêtes au sujet des plaintes

(2) Aussitôt que l'agent de révision décide qu'il ne peut pas amener les parties à accepter un règlement et qu'il ne donnera pas d'ordre en vertu du paragraphe 24 (3), il en avise les parties et le Tribunal.

Idem

(3) L'agent de révision peut décider de ne pas examiner la plainte s'il est d'avis que, selon le cas :

Décision de ne pas traiter de la plainte

- a) la plainte est futile, frivole, vexatoire ou faite de mauvaise foi;
- b) la plainte n'est pas du ressort de la Commission.

(4) L'agent de révision avise le plaignant de la décision qu'il a prise aux termes du paragraphe (3), et le plaignant peut demander au Tribunal de tenir une audience à l'égard de la décision.

Audience devant le Tribunal

24 (1) L'agent de révision qui est d'avis qu'un programme d'équité salariale n'est pas en cours d'élaboration tel que l'exige la partie II peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesures énoncées dans son ordre en vue d'élaborer le programme.

Ordres des agents de révision

(2) L'agent de révision qui est d'avis qu'un programme d'équité salariale n'est pas mis en oeuvre conformément à ses modalités peut ordonner à l'employeur de prendre les mesures énoncées dans son ordre aux fins de mettre en oeuvre le programme.

Idem

(3) L'agent de révision qui est d'avis qu'il y a eu contravention aux paragraphes 7 (1) ou (2) peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesu-

Idem

any, to take such steps as are set out in the order to comply with either or both of those subsections.

Idem

(4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 10.

Reference to
Tribunal

(5) Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the Hearings Tribunal.

Hearing
before
Tribunal

(6) An employer or bargaining agent named in an order under this section may request a hearing before the Hearings Tribunal with respect to the order, and, where the order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing.

Hearings

25.—(1) The Hearings Tribunal shall hold a hearing,

- (a) if a review officer is unable to effect a settlement of a complaint and has not made an order under subsection 24 (3);
- (b) if a request for a hearing, as described in subsection 23 (4) or 24 (6), is received by the Hearings Tribunal; or
- (c) if a review officer refers a matter to the Hearings Tribunal under subsection 24 (5).

Orders

(2) The Hearings Tribunal shall decide the issue that is before it for a hearing and, without restricting the generality of the foregoing, the Hearings Tribunal,

- (a) where it finds that an employer or a bargaining agent has failed to comply with Part II, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan;
- (b) where it finds that an employer has contravened subsection 9 (2) by dismissing, suspending or otherwise penalizing an employee, may order the employer to reinstate the employee, restore the employee's compensation to the same level as before the contravention and pay the employee the

res énoncées dans son ordre aux fins de se conformer à l'un ou l'autre de ces paragraphes ou aux deux.

(4) Un ordre donné aux termes du paragraphe (1) peut prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 10. Idem

(5) Si l'employeur ou l'agent négociateur ne se conforment pas à l'ordre donné aux termes du présent article, un agent de révision peut renvoyer la question au Tribunal. Renvoi
devant le
Tribunal

(6) Un employeur ou un agent négociateur nommés dans un ordre donné aux termes du présent article peuvent demander au Tribunal de tenir une audience à cet égard. Si l'ordre a été donné à la suite d'une plainte et que la plainte n'a pas fait l'objet d'un règlement, le plaignant peut également demander une audience. Audience
devant le
Tribunal

25 (1) Le Tribunal tient une audience dans les cas suivants : Audiences

- a) si l'agent de révision ne peut amener les parties à accepter un règlement relativement à la plainte et qu'il n'a pas donné d'ordre en vertu du paragraphe 24 (3);
- b) si le Tribunal reçoit une demande d'audience prévue aux paragraphes 23 (4) ou 24 (6);
- c) si l'agent de révision renvoie une question devant le Tribunal aux termes du paragraphe 24 (5).

(2) Le Tribunal règle la question dont il est saisi, et peut notamment : Ordonnances

- a) enjoindre à l'agent de révision d'élaborer un programme d'équité salariale destiné à l'établissement de l'employeur, lorsqu'il constate que ce dernier ou l'agent négociateur ne se sont pas conformés à la partie II. Il peut aussi enjoindre à l'employeur et à l'agent négociateur, le cas échéant, ou à l'un d'eux, d'acquitter la totalité des frais d'élaboration du programme;
- b) lorsqu'elle constate que l'employeur a enfreint le paragraphe 9 (2) en pénalisant un employé, notamment en le renvoyant ou en le suspendant, peut ordonner à l'employeur de réintégrer l'employé dans son emploi, de placer sa rétribution au même niveau qu'avant la contravention et de lui verser le

amount of all compensation lost because of the contravention;

- (c) where it finds that an employer has contravened subsection 9 (1) by reducing compensation, may order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction;
- (d) may confirm, vary or revoke orders of review officers;
- (e) may, for the female job class that is the subject of the complaint or reference, order adjustments in compensation in order to achieve pay equity, where the Hearings Tribunal finds that there has been a contravention of subsection 7 (1);
- (f) may order that the pay equity plan be revised in such manner as the Hearings Tribunal considers appropriate, where it finds that the plan is not appropriate for the female job class that is the subject of the complaint or reference because there has been a change of circumstances in the establishment; and
- (g) may order a party to a proceeding to take such action or refrain from such action as in the opinion of the Hearings Tribunal is required in the circumstances.

Idem

(3) An order under clause (2) (a) may provide that a review officer may retain the services of such experts as the review officer considers necessary to prepare a pay equity plan.

Application
of Part II

(4) Part II, except section 16, applies with necessary modifications to a pay equity plan prepared under clause (2) (a) but,

- (a) the order of the Hearings Tribunal may provide for a mandatory posting date that is later than the one provided in section 10;
- (b) the order of the Hearings Tribunal shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 13 (2) (e);

montant entier de la rétribution perdue en raison de la contravention;

- c) lorsqu'il constate que l'employeur a enfreint le paragraphe 9 (1) en diminuant la rétribution, ordonner à l'employeur de rajuster la rétribution de tous les employés concernés au taux auquel ils auraient eu droit n'eût été la diminution, et de verser une rétribution égale au montant perdu en raison de la diminution;
- d) confirmer, modifier ou révoquer les ordres des agents de révision;
- e) ordonner, à l'égard de la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi, que des rajustements de la rétribution soient effectués pour atteindre l'équité salariale, lorsqu'il constate qu'il y a eu contravention au paragraphe 7 (1);
- f) ordonner que le programme d'équité salariale soit révisé de la manière que le Tribunal estime appropriée lorsqu'il constate que le programme ne convient pas à la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi en raison d'un changement de la situation au sein de l'établissement;
- g) enjoindre à une partie à l'instance soit de prendre certaines mesures, soit de s'en abstenir, selon ce que le Tribunal juge nécessaire dans les circonstances.

(3) L'ordonnance prise en vertu de l'alinéa (2) a) peut permettre à l'agent de révision de retenir les services des experts que celui-ci estime nécessaires en vue d'élaborer un programme d'équité salariale. Idem

(4) À l'exception de l'article 16, la partie II s'applique avec les adaptations nécessaires au programme d'équité salariale élaboré en vertu de l'alinéa (2) a). Toutefois : Cas d'application de la partie II

- a) l'ordonnance prise par le Tribunal peut prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 10;
- b) l'ordonnance du Tribunal ne prévoit pas une date de rajustement de la rétribution différente de la date pertinente énoncée à l'alinéa 13 (2) e);

- (c) the review officer shall perform the duties of the employer and the bargaining agent, if any;
- (d) when the review officer posts the plan in the work place as subsection 14 (4) or 15 (6) provides, the employer, the bargaining agent (if the plan relates to a bargaining unit), or any employee or group of employees to whom the plan applies (if the plan does not relate to a bargaining unit) may file an objection with the Hearings Tribunal; and
- (e) an objection under clause (d) shall be dealt with by the Hearings Tribunal under section 17.

Retroactive
compensation
adjustments

(5) An order under clause (2) (e) may be retroactive to the day of the contravention of subsection 7 (1).

Idem

(6) An order under clause (2) (f) may provide that adjustments in compensation resulting from the revision of the pay equity plan be made retroactive to the day of the change in circumstances that gave rise to the order.

Offences and
penalties

26.—(1) Every person who contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, in the case of an individual, and not more than \$25,000, in any other case.

Parties

(2) If a corporation or bargaining agent contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted.

Prosecution
against
bargaining
agent

(3) A prosecution for an offence under this Act may be instituted against a bargaining agent in its own name.

Consent

(4) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Hearings Tribunal.

- c) l'agent de révision exerce les fonctions de l'employeur et de l'agent négociateur, le cas échéant;
- d) lorsque l'agent de révision affiche le programme sur les lieux de travail comme le prévoient les paragraphes 14 (4) ou 15 (6), l'employeur, l'agent négociateur (si le programme est relié à une unité de négociation) ou un employé ou un groupe d'employés visés par le programme (si le programme n'est pas relié à une unité de négociation) peuvent déposer une opposition auprès du Tribunal;
- e) le Tribunal traite de l'opposition visée à l'alinéa d) aux termes de l'article 17.

(5) L'ordonnance prise aux termes de l'alinéa (2) e) peut avoir un effet rétroactif au jour de la contravention au paragraphe 7 (1). Rajustements rétroactifs de la rétribution

(6) L'ordonnance prise aux termes de l'alinéa (2) f) peut prévoir que les rajustements de la rétribution résultant de la révision du programme d'équité salariale ont un effet rétroactif au jour où s'est produit le changement de situation qui a donné lieu à l'ordonnance. Idem

26 (1) Quiconque contrevient aux paragraphes 9 (2) ou 35 (5) ou à une ordonnance du Tribunal ou ne s'y conforme pas, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 \$ dans le cas d'une personne physique, et d'au plus 25 000 \$ dans les autres cas. Infractions et peines

(2) Si une personne morale ou un agent négociateur contreviennent aux paragraphes 9 (2) ou 35 (5) ou à une ordonnance du Tribunal ou ne s'y conforment pas, le dirigeant, l'employé ou le mandataire qui autorise ou permet la contravention ou y donne son consentement est partie à l'infraction, en est coupable et, sur déclaration de culpabilité, est passible de la peine prévue pour cette infraction, que la personne morale ou l'agent négociateur aient été ou non poursuivis ou déclarés coupables de l'infraction. Parties

(3) Une poursuite relative à une infraction à la présente loi peut être intentée contre l'agent négociateur en tant que tel. Poursuite contre l'agent négociateur

(4) Il ne peut être intenté aucune poursuite relative à une infraction à la présente loi sans le consentement écrit du Tribunal. Consentement

PART V

Administration

Commission
established

27.—(1) There is hereby established a commission to be known as the Pay Equity Commission of Ontario.

Idem

(2) The Commission shall consist of the Pay Equity Hearings Tribunal and the Pay Equity Office.

Staff

R.S.O. 1980,
c. 418

(3) Such employees as are necessary for the proper conduct of the Commission's work may be appointed under the *Public Service Act* to serve in the Pay Equity Office.

Services of
ministries,
etc.

(4) The Commission shall, if appropriate, use the services and facilities of a ministry, board, commission or agency of the Government of Ontario.

Hearings
Tribunal

28.—(1) The Hearings Tribunal shall be composed of a presiding officer, one or more deputy presiding officers and as many other members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

Alternate
presiding
officer

(2) The Lieutenant Governor in Council shall designate one of the deputy presiding officers to be alternate presiding officer and the person so designated, in the absence of the presiding officer or if the presiding officer is unable to act, shall have all of the powers of the presiding officer.

Remuneration
and expenses

(3) The members of the Hearings Tribunal who are not Crown employees shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

Resignation
of member

(4) Where a member of the Hearings Tribunal resigns, he or she may carry out and complete any duties or responsibilities and exercise any powers that he or she would have had if he or she had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he or she participated as a member of the Hearings Tribunal.

Powers and
duties of
Tribunal

29.—(1) The Hearings Tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by this Act or the regulations.

PARTIE V

Application de la loi

- 27** (1) Est créée une commission nommée Commission de l'équité salariale de l'Ontario. Création de la Commission
- (2) La Commission se compose du Tribunal de l'équité salariale et du Bureau de l'équité salariale. Idem
- (3) Les employés nécessaires à la conduite efficace des activités de la Commission peuvent être nommés aux termes de la *Loi sur la fonction publique* afin de travailler au Bureau de l'équité salariale. Personnel
L.R.O. 1980, chap. 418
- (4) La Commission se prévaut, si cela est approprié, des services et installations des ministères, commissions ou organismes du gouvernement de l'Ontario. Services des ministères, etc.
- 28** (1) Le Tribunal se compose d'un président, d'un ou de plusieurs vice-présidents, et du nombre d'autres membres répartis en un nombre égal de représentants des employeurs et des employés que le lieutenant-gouverneur en conseil juge approprié. Toutes ces personnes sont nommées par le lieutenant-gouverneur en conseil. Tribunal
- (2) Le lieutenant-gouverneur en conseil désigne l'un des vice-présidents comme président suppléant. Cette personne possède tous les pouvoirs du président si ce dernier est absent ou empêché d'agir. Président suppléant
- (3) Les membres du Tribunal qui ne sont pas des employés de la Couronne reçoivent la rémunération que peut fixer le lieutenant-gouverneur en conseil, et, sous réserve de l'approbation du Conseil de gestion du gouvernement, les frais normaux engagés lors de l'exercice de leurs fonctions aux termes de la présente loi. Rémunération et frais
- (4) Le membre du Tribunal qui démissionne peut toutefois exercer les attributions qu'il aurait continué d'avoir s'il n'avait pas démissionné, en ce qui concerne toute question faisant l'objet d'une instance à laquelle il a participé en tant que membre. Démission d'un membre
- 29** (1) Le Tribunal peut exercer les pouvoirs et doit accomplir les obligations qui lui sont conférés par la présente loi ou par les règlements. Attributions du Tribunal

Idem

(2) Without limiting the generality of subsection (1), the Hearings Tribunal,

- (a) may decide in an order made under subsection 17 (1) or clause 25 (2) (a) that any job class is a female job class or a male job class;
- (b) may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it; and
- (c) may require that any person seeking a determination of any matter by the Hearings Tribunal shall give written notice, in such form and manner as the Hearings Tribunal specifies, to the persons that the Hearings Tribunal specifies.

Panels

(3) The presiding officer may establish panels of the Hearings Tribunal and it may sit in two or more panels simultaneously so long as a quorum of the Hearings Tribunal is present on each panel.

Quorum

(4) The presiding officer or a deputy presiding officer, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Hearings Tribunal.

Decisions

(5) The decision of the majority of the members of the Hearings Tribunal present and constituting a quorum is the decision of the Hearings Tribunal, but, if there is no majority, the decision of the presiding officer or deputy presiding officer governs.

Exclusive jurisdiction

30.—(1) The Hearings Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Hearings Tribunal thereon is final and conclusive for all purposes.

Reconsideration of decisions, etc.

(2) The Hearings Tribunal may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order.

Testimony in civil proceedings

31. Except with the consent of the Hearings Tribunal, no member of the Hearings Tribunal, employee of the Commission or person whose services have been contracted for by the Commission shall be required to testify in any civil proceeding, in any proceeding before the Hearings Tribunal or in any proceeding before any other tribunal respecting information

(2) Le Tribunal possède notamment les attributions suivantes : Idem

- a) il peut décider, au moyen d'une ordonnance prise aux termes du paragraphe 17 (1) ou de l'alinéa 25 (2) a), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;
- b) il peut établir des règles concernant la conduite et la gestion de ses affaires, ainsi que des règles de pratique et de procédure à suivre relativement aux questions dont il est saisi;
- c) il peut exiger que la personne qui lui demande de prendre une décision relative à une question quelconque en avise par écrit, de la manière que précise le Tribunal, les personnes qu'il précise.

(3) Le président peut former des comités du Tribunal, qui peut ainsi siéger simultanément en plusieurs comités, pourvu que le quorum du Tribunal soit atteint dans chacun d'eux. Comités

(4) Le président ou un vice-président, un membre représentant les employeurs et un membre représentant les employés constituent le quorum et peuvent exercer tous les pouvoirs du Tribunal. Quorum

(5) La décision de la majorité des membres du Tribunal présents qui constituent le quorum est la décision du Tribunal. En cas de partage, le président ou le vice-président a voix prépondérante. Décisions

30 (1) Le Tribunal a compétence exclusive pour exercer les pouvoirs que lui confère la présente loi et trancher les questions de fait ou de droit soulevées à l'occasion d'une question dont il est saisi. Ses décisions et les mesures qu'il prend sont définitives et ont à toutes fins force de chose jugée. Compétence exclusive

(2) Le Tribunal peut, chaque fois qu'il le juge à propos, examiner de nouveau, modifier ou annuler ses propres décisions et ordonnances. Nouvel examen des décisions et ordonnances

31 Sauf si le Tribunal y consent, ses membres, les employés de la Commission et les personnes dont elle a retenu les services par contrat ne peuvent pas être contraints à témoigner lors d'une instance civile ou devant le Tribunal ou tout autre tribunal administratif, en ce qui concerne les rensei- Témoignages lors d'instances civiles

obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

Parties to
proceedings

➤ **32.**—(1) Where a hearing is held before the Hearings Tribunal or where a review officer investigates for the purposes of effecting a settlement of an objection or complaint, the parties to the proceeding are,

- (a) the employer;
- (b) the objector or complainant; and
- (c) the bargaining agent (if the pay equity plan relates to a bargaining unit) or the employees to whom the plan relates (if the plan does not relate to a bargaining unit).

Notice

(2) Where the Hearings Tribunal or a review officer requires that a notice be given by the employer to employees, the employer shall post the notice in the work place and such notice shall be deemed to have been sufficiently given to all employees in the work place when it is so posted.

Represent-
ation

(3) An employee or a group of employees may appoint any person or organization to act as the agent of the employee or group of employees before the Hearings Tribunal or before a review officer.

Idem

(4) Where an employee or group of employees advises the Hearings Tribunal in writing that the employee or group of employees wishes to remain anonymous, the agent of the employee or group of employees shall be the party to the proceeding before the Hearings Tribunal or review officer and not the employee or group of employees.

Idem

(5) Where subsection (4) applies, the agent, in the agent's name, may take all actions that an employee may take under this Act including the filing of objections under Part II and the filing of complaints under Part IV.

Pay Equity
Office

33.—(1) The Pay Equity Office is responsible for the enforcement of this Act and orders of the Hearings Tribunal.

Idem

(2) Without limiting the generality of subsection (1), the Pay Equity Office,

- (a) may conduct research and produce papers concerning any aspect of pay equity and related subjects and make recommendations to the Minister in connection therewith;

gnements obtenus dans l'accomplissement de leurs devoirs ou dans le cadre de leurs fonctions aux termes de la présente loi.

32 (1) Lorsque le Tribunal tient une audience ou qu'un agent de révision mène une enquête en vue d'amener les parties à accepter un règlement relativement à une opposition ou à une plainte, les parties à l'instance sont les suivantes :

Parties à l'instance

- a) l'employeur;
- b) l'opposant ou le plaignant;
- c) l'agent négociateur (si le programme d'équité salariale est relié à une unité de négociation) ou les employés visés par le programme (si celui-ci n'est pas relié à une unité de négociation).

(2) Lorsque le Tribunal ou l'agent de révision exige que l'employeur donne un avis à ses employés, celui-ci affiche l'avis sur les lieux de travail, et l'avis ainsi affiché est réputé suffisant à l'égard de tous les employés du lieu de travail.

Avis

(3) Un employé ou un groupe d'employés peuvent désigner une personne ou une organisation comme leur mandataire devant le Tribunal ou l'agent de révision.

Représentation

(4) Lorsqu'un employé ou un groupe d'employés avisent par écrit le Tribunal de leur désir de garder l'anonymat, leur mandataire devient à leur place la partie à l'instance devant le Tribunal ou l'agent de révision.

Idem

(5) Lorsque le paragraphe (4) s'applique, le mandataire peut, en son nom, prendre toutes les mesures qu'un employé peut prendre aux termes de la présente loi. Il peut notamment déposer une opposition en vertu de la partie II et déposer une plainte en vertu de la partie IV.

Idem

33 (1) Le Bureau de l'équité salariale est chargé de l'exécution de la présente loi et des ordonnances du Tribunal.

Bureau de l'équité salariale

(2) Le Bureau de l'équité salariale possède notamment les attributions suivantes :

Idem

- a) il peut effectuer des recherches et préparer des rapports concernant n'importe quel aspect de l'équité salariale et des questions connexes et peut également formuler des recommandations au ministre en ce qui concerne l'objet de ces recherches ou rapports;

- (b) may conduct public education programs and provide information concerning any aspect of pay equity and related subjects;
- (c) shall provide support services to the Hearings Tribunal;
- (d) shall conduct such studies as the Minister requires and make reports and recommendations in relation thereto; and
- (e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been predominantly female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the Minister in relation to redressing such discrimination.

Chief
adminis-
trative
officer

(3) The Lieutenant Governor in Council shall appoint a person to be the head of the Pay Equity Office and that person shall be the chief administrative officer of the Commission.

Minister
may require
studies, etc.

(4) The Minister may require the Pay Equity Office to conduct such studies related to pay equity as are set out in a request to the head of the Office and to make reports and recommendations in relation thereto.

Annual
report

(5) Not later than the 31st day of March in each year, the head of the Pay Equity Office shall make an annual report to the Minister on the activities and affairs of the Commission and the Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Review
officers,
designation

34.—(1) The head of the Pay Equity Office shall designate one or more employees of the Office to be review officers.

Review
officers,
duties

(2) Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal.

- b) il peut instituer à l'intention du public des programmes d'information concernant n'importe quel aspect de l'équité salariale et des questions connexes;
- c) il fournit des services d'appoint au Tribunal;
- d) il mène les études qu'exige le ministre et prépare des rapports et formule des recommandations en ce qui concerne l'objet de ces études;
- e) il mène une étude au sujet de la discrimination systémique entre les sexes en ce qui concerne la rétribution du travail effectué, dans les secteurs de l'économie où la main-d'oeuvre est traditionnellement à prédominance féminine, par des catégories d'emplois à prédominance féminine dans les établissements qui n'ont pas de catégories d'emplois à prédominance masculine appropriées aux fins d'établir la comparaison visée à l'article 5; dans l'année qui suit la date d'entrée en vigueur, il prépare des rapports et formule des recommandations à l'intention du ministre en vue d'éliminer cette discrimination.

(3) Le lieutenant-gouverneur en conseil nomme une personne à la direction du Bureau de l'équité salariale. Cette personne est le responsable de l'administration de la Commission.

Responsable
de l'adminis-
tration

(4) Le ministre peut exiger que le Bureau de l'équité salariale mène les études liées à l'équité salariale que précise une demande qu'il adresse au dirigeant du Bureau. Il peut également exiger que le Bureau prépare des rapports et formule des recommandations en ce qui concerne l'objet de ces études.

Études exi-
gées par le
ministre

(5) Le dirigeant du Bureau de l'équité salariale présente au ministre, au plus tard le 31 mars de chaque année, un rapport annuel sur les activités et affaires de la Commission. Le ministre le dépose devant l'Assemblée si elle siège, sinon il le fait à la session suivante.

Rapport
annuel

34 (1) Le dirigeant du Bureau de l'équité salariale désigne un ou plusieurs employés du Bureau comme agents de révision.

Désignation
des agents
de révision

(2) Il incombe aux agents de révision de contrôler l'élaboration et la mise en oeuvre des programmes d'équité salariale et de mener des enquêtes au sujet des oppositions et des plaintes qui ont été déposées auprès de la Commission. Ils peuvent tenter d'amener les parties à accepter un règlement.

Fonctions
des agents
de révision

Powers

(3) A review officer, for the purpose of carrying out his or her duties,

- (a) may enter any place at any reasonable time;
- (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;
- (d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and
- (e) may provide in an order made under subsection 16 (2) or 24 (1) that any job class is a female job class or a male job class.

Non-application of R.S.O. 1980, c. 484

(4) The *Statutory Powers Procedure Act* does not apply to a review officer and he or she is not required to hold a hearing before making an order authorized by this Act.

Entry to dwellings

35.—(1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of a review officer's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the review officer named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Il leur incombe de prendre toute autre mesure prévue par la présente loi ou par une ordonnance du Tribunal.

(3) Dans l'exercice de ses fonctions, l'agent de révision peut : Pouvoirs

- a) à une heure raisonnable, pénétrer dans un endroit quelconque;
- b) exiger la production, à des fins d'inspection, de documents ou d'objets qui peuvent être reliés à l'exercice de ses fonctions;
- c) après avoir donné un récépissé à cet effet, enlever de quelque endroit où ils se trouvent, les documents ou les objets produits à la suite de la demande formulée en vertu de l'alinéa b), aux fins d'en tirer des copies ou des extraits, après quoi ils sont promptement retournés à la personne qui les a produits;
- d) interroger quiconque sur des questions qui sont ou peuvent être reliées à l'exercice de ses fonctions, sous réserve du droit de cette personne à la présence d'un avocat ou d'un autre représentant lors de l'interrogatoire;
- e) stipuler, dans un ordre donné aux termes des paragraphes 16 (2) ou 24 (1), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(4) La *Loi sur l'exercice des compétences légales* ne s'applique pas à un agent de révision, et celui-ci n'est pas obligé de tenir une audience avant de donner un ordre autorisé par la présente loi. Non-application du chap. 484 des L.R.O. de 1980

35 (1) Le pouvoir accordé par la présente loi de pénétrer dans un endroit qui sert de logement, ne peut être exercé sans la permission de l'occupant, sauf en vertu d'un mandat délivré aux termes du présent article. Accès à un logement

(2) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il se trouve dans un endroit quelconque des documents ou des objets qu'on peut raisonnablement croire susceptibles de fournir des preuves à l'agent de révision dans l'exercice de ses fonctions aux termes de la présente loi, peut délivrer un mandat de perquisition rédigé selon la formule prescrite. Le mandat autorise l'agent de révision qui y est nommé à perquisitionner à cet endroit en vue d'en enlever les pièces précitées pour en tirer des copies ou des Mandat de perquisition

Warrant for
entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a review officer may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the review officer named in the warrant.

Execution
and
expiry of
warrant

(4) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(5) No person shall hinder, obstruct or interfere with a review officer in the execution of a warrant or otherwise impede a review officer in carrying out his or her duties under this Act.

Idem

(6) Subsection (5) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (2).

Admissibility
of copies

(7) Copies of, or extracts from, documents and things removed from premises under this Act and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

PART VI

Regulations and Miscellaneous

Regulations

36. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and notices and providing for their use;
- (b) prescribing methods for determining the historical incumbency of a job class;
- (c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class;

extraits, après quoi elles sont promptement retournées à cet endroit.

(3) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il existe des motifs raisonnables de croire qu'il est nécessaire qu'un agent de révision, dans l'exercice de ses fonctions en vertu de la présente loi, pénètre dans un endroit qui sert de logement ou dont l'accès a été refusé, peut délivrer un mandat rédigé selon la formule prescrite, autorisant l'agent de révision qui y est nommé à pénétrer dans cet endroit.

Mandat pour pénétrer dans un endroit

(4) Le mandat délivré aux termes du présent article :

Exécution et caducité du mandat

- a) précise les jours et les heures pendant lesquels il peut être exécuté;
- b) porte une date de caducité qui ne peut être postérieure à quinze jours de sa délivrance.

(5) Nul ne doit entraver ni gêner un agent de révision dans l'exécution d'un mandat ni d'une autre façon l'empêcher d'exercer ses fonctions aux termes de la présente loi.

Interdiction d'entraver

(6) Sauf si un mandat a été délivré aux termes du paragraphe (2), le paragraphe (5) n'est pas enfreint par le refus d'une personne de produire des documents ou des objets.

Idem

(7) Les copies ou extraits qu'une personne a tirés des documents et des objets qui ont été enlevés d'un endroit aux termes de la présente loi et que cette personne certifie être conformes aux originaux, sont admissibles en preuve dans la même mesure et ont la même valeur probante que les documents ou les objets dont ils sont tirés.

Admissibilité des copies

PARTIE VI

Règlements et dispositions diverses

36 Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) prescrire des formules et des avis, et prévoir les modalités de leur emploi;
- b) prescrire les méthodes à utiliser pour déterminer le sexe des personnes qui occupent traditionnellement les postes d'une catégorie d'emplois;
- c) prescrire des critères dont il est tenu compte aux fins de déterminer si une catégorie d'emplois est

- (d) prescribing the method of valuing any form of compensation;
- (e) prescribing criteria that shall be taken into account in determining whether work performed in two job classes is of equal or comparable value;
- (f) prescribing criteria that shall be taken into account in deciding whether or not a difference in compensation between a female job class and a male job class is a difference that is permitted by subsection 8 (1) or (2);
- (g) permitting the Hearings Tribunal, on the application of an employer and in accordance with such criteria as may be prescribed in the regulations, to change the mandatory posting date and the dates for adjustments in compensation to dates later than those set out in Part II and to vary the minimum adjustments in compensation required by that Part, subject to such conditions as the Hearings Tribunal may impose in its order granting the application;
- (h) adding to the Appendix to the Schedule any person or class of persons or any agency, authority, board, commission, corporation or organization of any kind and providing that the mandatory posting date for an entity so added shall be such date as is set out in the regulations.

Review of
Act

37.—(1) Seven years after the effective date, the Lieutenant Governor in Council shall appoint a person who shall undertake a comprehensive review of this Act and its operation.

Report to
Minister

(2) The person appointed under subsection (1) shall prepare a report on his or her findings and shall submit the report to the Minister.

Idem

(3) The Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Moneys

38. The moneys required for the purposes of this Act by the Crown in right of Ontario shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;

- d) prescrire la méthode à utiliser pour déterminer la valeur de toute forme de rétribution;
- e) prescrire des critères dont il est tenu compte aux fins de déterminer si le travail effectué dans deux catégories d'emplois est de valeur égale ou comparable;
- f) prescrire des critères dont il est tenu compte aux fins de déterminer si un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine est un écart permis par les paragraphes 8 (1) ou (2);
- g) permettre au Tribunal, à la demande d'un employeur et conformément aux critères qui peuvent être prescrits dans les règlements, de reporter la date d'affichage obligatoire et les dates des rajustements de la rétribution à des dates postérieures à celles que prévoit la partie II, ainsi que de modifier les rajustements minimaux de la rétribution exigés par cette partie, aux conditions que le Tribunal peut imposer dans l'ordonnance par laquelle il consent à la demande;
- h) ajouter à l'appendice de l'annexe une personne, une catégorie de personnes ou un organisme, un office, un conseil, une commission, une personne morale ou une organisation quelconque, et prévoir que la date d'affichage obligatoire de ces derniers est celle qui figure aux règlements.

37 (1) Sept ans après la date d'entrée en vigueur, le lieutenant-gouverneur en conseil nomme une personne qui procède à l'examen global de la présente loi et des modalités de son application. Examen de la loi

(2) La personne nommée aux termes du paragraphe (1) rédige un rapport qui énonce ses conclusions et le présente au ministre. Rapport au ministre

(3) Le ministre dépose le rapport devant l'Assemblée si elle siège, sinon il le fait à la session suivante. Idem

38 Les sommes d'argent nécessaires à la Couronne du chef de l'Ontario pour l'application de la présente loi sont prélevées, jusqu'au 31 mars 1988, sur le Fonds du revenu conso- Sommes d'argent

- Crown bound **39.** This Act binds the Crown in right of Ontario.
- Commence-
ment **40.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Short title **41.** The short title of this Act is the *Pay Equity Act, 1987*.

SCHEDULE

1. The public sector in Ontario consists of,

- (a) the Crown in right of Ontario, every agency thereof, and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
- R.S.O. 1980,
c. 303 (b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;
- R.S.O. 1980,
c. 129 (c) every board as defined in the *Education Act*, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;
- R.S.O. 1980,
cc. 410, 389,
79, 391 (d) every hospital listed in the Schedule to Regulation 863 of Revised Regulations of Ontario, 1980 made under the *Public Hospitals Act*, every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*, every hospital established or approved by the Lieutenant Governor in Council as a community psychiatric hospital under the *Community Psychiatric Hospitals Act* and every sanitarium licensed by the Lieutenant Governor in Council under the *Private Sanitaria Act*;
- (e) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- 1983, c. 10 (g) every board of health under the *Health Promotion and Protection Act, 1983*, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;

l'idé. Après cette date, ces sommes sont prélevées sur les sommes affectées à cette fin par la Législature.

39 La présente loi lie la Couronne du chef de l'Ontario.

La Couronne
est liée

40 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en
vigueur

41 Le titre abrégé de la présente loi est *Loi de 1987 sur l'équité salariale*.

Titre abrégé

ANNEXE

1 Le secteur public en Ontario se compose des éléments suivants :

- a) la Couronne du chef de l'Ontario, les organismes qui en relèvent, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont la majorité des administrateurs, des membres ou des dirigeants sont nommés ou choisis par le lieutenant-gouverneur en conseil ou par un membre du Conseil des ministres ou avec leur approbation;
- b) les municipalités de l'Ontario, les conseils locaux au sens de la *Loi sur les affaires municipales*, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont les membres ou les dirigeants sont nommés ou choisis par le conseil d'une municipalité de l'Ontario ou avec leur approbation;
- c) les conseils au sens de la *Loi sur l'éducation*, ainsi que les collèges, les universités et les établissements d'enseignement postsecondaire de l'Ontario qui reçoivent la majeure partie de leur capital ou de leurs fonds annuels de fonctionnement de la Couronne;
- d) les hôpitaux dont le nom figure à l'annexe du Règlement 863 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur les hôpitaux publics*, les hôpitaux privés exploités aux termes d'un permis délivré en vertu de la *Loi sur les hôpitaux privés*, les hôpitaux établis ou agréés par le lieutenant-gouverneur en conseil à titre d'hôpitaux psychiatriques communautaires en vertu de la *Loi sur les hôpitaux psychiatriques communautaires*, ainsi que les maisons de santé titulaires d'un permis délivré par le lieutenant-gouverneur en conseil en vertu de la *Loi sur les maisons de santé*;
- e) les personnes morales disposant d'un capital-actions dont au moins 90 pour cent des actions émises sont détenues à titre bénéficiaire par un ou plusieurs employeurs visés aux alinéas a) à d) ou pour le compte de ceux-ci, ainsi que les filiales en propriété exclusive de ces personnes morales;
- f) les personnes morales sans capital-actions dont la majorité des membres ou des dirigeants sont nommés ou choisis par un ou plusieurs des employeurs visés aux alinéas a) à d) ou avec leur approbation, ou en sont membres, ainsi que les filiales en propriété exclusive de ces personnes morales;
- g) les conseils de santé aux termes de la *Loi de 1983 sur la protection et la promotion de la santé*, ainsi que les conseils de santé aux termes d'une loi de la Législature qui crée ou maintient une municipalité régionale;

L.R.O. 1980,
chap. 303

L.R.O. 1980,
chap. 129

L.R.O. 1980,
chap. 410,
389, 79, 391

1983,
chap. 10

- (h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Provincial Auditor; and
- (i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

2. For the purposes of this Schedule, "municipality" includes a metropolitan, regional or district municipality and the County of Oxford.

APPENDIX

MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation.

MINISTRY OF CITIZENSHIP AND CULTURE

1. The Art Gallery of Ontario.
2. CJRT-FM Inc.
3. Royal Botanical Gardens.

MINISTRY OF COLLEGES AND UNIVERSITIES

1. Algoma College.
2. Assumption University.
3. Brescia College.
4. Canterbury College.
5. Collège dominicain de philosophie et de théologie.
6. Concordia Lutheran Seminary.
7. Conrad Grebel College.
8. Hearst College.
9. Holy Redeemer College.
10. Huntington University.
11. Huron College.
12. Iona College.
13. King's College.
14. Knox College.
15. L'Université de Sudbury.
16. McMaster Divinity College.

- h) le Bureau du lieutenant-gouverneur de l'Ontario et celui de l'Assemblée, les membres de l'Assemblée, le Bureau de l'ombudsman et celui du vérificateur provincial;
- i) les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes et les catégories de ceux-ci qui figurent dans l'appendice à la présente annexe ou qui sont ajoutés à l'appendice au moyen de règlements pris en application de la présente loi.

2 Pour l'application de la présente annexe, le terme «municipalité» s'entend en outre d'une municipalité régionale, de district ou de communauté urbaine, ainsi que du comté d'Oxford.

APPENDICE

MINISTÈRE DE L'AGRICULTURE ET DE L'ALIMENTATION

1. Ontario Dairy Herd Improvement Corporation.

MINISTÈRE DES AFFAIRES CIVIQUES ET CULTURELLES

1. Musée des beaux-arts de l'Ontario.
2. CJRT-FM Inc.
3. Royal Botanical Gardens.

MINISTÈRE DES COLLÈGES ET UNIVERSITÉS

1. Algoma College.
2. Assumption University.
3. Brescia College.
4. Canterbury College.
5. Collège dominicain de philosophie et de théologie.
6. Concordia Lutheran Seminary.
7. Conrad Grebel College.
8. Collège de Hearst.
9. Holy Redeemer College.
10. Huntington University.
11. Huron College.
12. Iona College.
13. King's College.
14. Knox College.
15. L'Université de Sudbury.
16. McMaster Divinity College.

17. Nipissing College.
18. Queen's Theological College.
19. Regis College.
20. Renison College.
21. St. Augustine's Seminary.
22. St. Paul's United College.
23. St. Paul University.
24. St. Peter's Seminary.
25. The University of St. Jerome's College.
26. The University of St. Michael's College.
27. Thorneloe University.
28. Trinity College.
29. Victoria University.
30. Waterloo Lutheran Seminary.
31. Wycliffe College.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,
 - (a) children's residences operating under the *Child and Family Services Act, 1984* (c. 55);
 - (b) homes for the aged operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203);
 - (c) counselling services and staff training purchased by municipalities under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188);
 - (d) counselling services purchased by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (e) hostels providing services purchased by municipalities under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188);
 - (f) work activity projects under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188) purchased by municipalities or the Ministry of Community and Social Services;

17. Nipissing College.
18. Queen's Theological College.
19. Regis College.
20. Renison College.
21. St- Augustine's Seminary.
22. St. Paul's United College.
23. Université Saint-Paul.
24. St. Peter's Seminary.
25. The University of St. Jerome's College.
26. The University of St. Michael's College.
27. Thorneloe University.
28. Trinity College.
29. Victoria University.
30. Waterloo Lutheran Seminary.
31. Wycliffe College.

MINISTÈRE DES SERVICES SOCIAUX ET COMMUNAUTAIRES

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) les foyers pour enfants qui fonctionnent en vertu de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55);
- b) les foyers pour personnes âgées qui fonctionnent en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203);
- c) les services de consultation et de formation du personnel qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188);
- d) les services de consultation qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- e) les centres d'accueil qui fournissent des services qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188);
- f) des programmes d'adaptation au travail en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188) qui sont achetés par des municipalités ou par le ministère des Services sociaux et communautaires;

- (g) support services to the physically handicapped purchased by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (h) vocational rehabilitation services funded by the Ministry of Community and Social Services under the *Vocational Rehabilitation Services Act* (R.S.O. 1980, c. 525);
 - (i) satellite homes operating or funded under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203);
 - (j) nursing services purchased or funded under the *Homemakers and Nurses Services Act* (R.S.O. 1980, c. 200);
 - (k) workshops under the *Vocational Rehabilitation Services Act* (R.S.O. 1980, c. 525);
 - (l) services funded under the *Developmental Services Act* (R.S.O. 1980, c. 118);
 - (m) homes for retarded persons and auxiliary residences under the *Homes for Retarded Persons Act* (R.S.O. 1980, c. 201);
 - (n) day nurseries operated by corporations or municipalities under the *Day Nurseries Act* (R.S.O. 1980, c. 111) receiving direct subsidies from the Ministry of Community and Social Services;
 - (o) day nurseries and private home day-care agencies providing services and funded under agreements with municipalities under the *Day Nurseries Act* (R.S.O. 1980, c. 111);
 - (p) credit counselling services receiving financial assistance under agreements with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (q) young offenders services funded under Part IV of the *Child and Family Services Act, 1984* (c. 55) or under an agreement with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (r) services to children funded or purchased by the Ministry of Community and Social Services under the *Child and Family Services Act, 1984* (c. 55).
2. Societies within the meaning of the *Child and Family Services Act, 1984* (c. 55) and agencies from whom such societies purchase child care services.
3. Corporations operating charitable institutions approved under the *Charitable Institutions Act* (R.S.O. 1980, c. 64).

- g) des services d'appoint pour les personnes atteintes d'un handicap physique qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- h) des services de réadaptation professionnelle financés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- i) des foyers annexes qui fonctionnent ou qui sont financés en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203);
- j) des services de soins infirmiers qui sont achetés ou financés en vertu de la *Loi sur les services d'aides familiales et d'infirmières visiteuses* (L.R.O. 1980, chap. 200);
- k) des ateliers établis en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- l) des services financés en vertu de la *Loi sur les services aux déficients mentaux* (L.R.O. 1980, chap. 118);
- m) des foyers pour déficients mentaux et des établissements auxiliaires aux termes de la *Loi sur les foyers pour déficients mentaux* (L.R.O. 1980, chap. 201);
- n) des garderies dont le fonctionnement est assuré par des personnes morales ou des municipalités en vertu de la *Loi sur les garderies* (L.R.O. 1980, chap. 111) qui reçoivent des subventions directes du ministère des Services sociaux et communautaires;
- o) des garderies et des sociétés de garde d'enfants en maisons privées qui fournissent des services et qui sont financées aux termes d'ententes conclues avec des municipalités en vertu de la *Loi sur les garderies* (L.R.O. 1980, chap. 111);
- p) des services de consultation en matière de crédit qui reçoivent une aide financière aux termes d'ententes conclues avec le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- q) des services aux jeunes contrevenants qui sont financés aux termes de la partie IV de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ou aux termes d'une entente conclue avec le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- r) des services aux enfants qui sont financés ou achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55).

2 Les sociétés au sens de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ainsi que les agences auprès desquelles ces sociétés achètent des services de soins aux enfants.

3 Les personnes morales qui assurent le fonctionnement d'établissements de bienfaisance agréés en vertu de la *Loi sur les établissements de bienfaisance* (L.R.O. 1980, chap. 64).

4. Boards of management operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203).

5. District Welfare Administration Boards operating under the *District Welfare Administration Boards Act* (R.S.O. 1980, c. 122).

MINISTRY OF CORRECTIONAL SERVICES

1. Any agency, board, commission, person or partnership that provides, under funding by the Ministry of Correctional Services,

- (a) assistance to witnesses, victims of crime or disabled persons;
- (b) educational, employment search, medical or promotional services;
- (c) supervision of inmates, parolees, probationers or persons accused of crime;
- (d) community residential services.

MINISTRY OF EDUCATION

1. Centre franco-ontarien de ressources pédagogiques.

MINISTRY OF HEALTH

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) an ambulance service, under the authority of a licence issued under the *Ambulance Act* (R.S.O. 1980, c. 20);
- (b) a nursing home, under the authority of a licence issued under the *Nursing Homes Act* (R.S.O. 1980, c. 320);
- (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the *Laboratory and Specimen Collection Centre Licensing Act* (R.S.O. 1980, c. 409);
- (d) a psychiatric facility within the meaning of the *Mental Health Act* (R.S.O. 1980, c. 262), the operation of which is funded in whole or in part by the Ministry of Health;
- (e) a home for special care established, approved or licensed under the *Homes for Special Care Act* (R.S.O. 1980, c. 202);
- (f) a home care facility within the meaning of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197) or a facility which, by arrangement with any such home care facility,

4 Les conseils de gestion qui fonctionnent en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203).

5 Les commissions de district pour l'administration de l'aide sociale fonctionnant en vertu de la *Loi sur les commissions de district pour l'administration de l'aide sociale* (L.R.O. 1980, chap. 122).

MINISTÈRE DES SERVICES CORRECTIONNELS

1 Les organismes, conseils, commissions, personnes ou sociétés en nom collectif qui fournissent, grâce au financement du ministère des Services correctionnels, les services suivants :

- a) des services d'aide aux témoins, aux victimes d'actes criminels ou aux personnes handicapées;
- b) des services d'enseignement, de recherche d'emploi, des services médicaux ou de promotion;
- c) la surveillance de détenus, de personnes en liberté conditionnelle, de probationnaires ou de personnes accusées d'un acte criminel;
- d) des services de placement en établissement communautaire.

MINISTÈRE DE L'ÉDUCATION

1 Centre franco-ontarien de ressources pédagogiques.

MINISTÈRE DE LA SANTÉ

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisation de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) un service d'ambulance, aux termes d'un permis délivré en vertu de la *Loi sur les services d'ambulance* (L.R.O. 1980, chap. 20);
- b) une maison de soins infirmiers, aux termes d'un permis délivré en vertu de la *Loi sur les maisons de soins infirmiers* (L.R.O. 1980, chap. 320);
- c) un laboratoire médical ou un centre de prélèvements, aux termes d'un permis délivré en vertu de la *Loi autorisant des laboratoires médicaux et des centres de prélèvements* (L.R.O. 1980, chap. 409);
- d) un établissement psychiatrique au sens de la *Loi sur la santé mentale* (L.R.O. 1980, chap. 262), dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- e) un foyer de soins spéciaux ouvert, agréé ou autorisé en vertu de la *Loi sur les foyers de soins spéciaux* (L.R.O. 1980, chap. 202);
- f) un établissement de soins à domicile au sens du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197) ou un établissement qui, aux termes d'une entente avec l'établissement de soins à domicile en question, répond aux conditions suivantes :

- (i) supplies nursing, physiotherapy, occupational therapy or speech therapy services that are insured home care services under section 44 of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197), and
 - (ii) is entitled to payment from the home care facility for or in respect of supplying such services;
 - (g) a rehabilitation centre or a crippled children's centre listed in Schedule 10 to Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197);
 - (h) a detoxification centre the operation of which is funded in whole or in part by the Ministry of Health;
 - (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health;
 - (j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Ministry of Health.
2. A district health council appointed under the *Ministry of Health Act* (R.S.O. 1980, c. 280).
3. A laundry that is operated exclusively for one or more than one hospital.
4. Hospital Food Services—Ontario Inc.
5. Toronto District Heating Corporation.
6. Addiction Research Foundation.
7. The operations in Ontario of the Canadian Red Cross Society, other than the provision by the society of home support services for the elderly and homemaking services.
8. The Hospital Council of Metropolitan Toronto.
9. The Hospital Medical Records Institute.
10. The Ontario Cancer Institute.
11. The Ontario Cancer Treatment and Research Foundation.
12. The Ontario Mental Health Foundation.
13. The Toronto Institute of Medical Technology.

MINISTRY OF INDUSTRY, TRADE AND TECHNOLOGY

1. Metropolitan Toronto Convention Centre.

- (i) fournit des services de soins infirmiers, des services de physiothérapie, d'ergothérapie ou d'orthophonie qui sont des services de soins à domicile assurés aux termes de l'article 44 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197),
- (ii) a droit au paiement, en contrepartie ou à l'égard de la fourniture des services en question, de frais qui lui sont versés par l'établissement des services à domicile en question;
- g) un centre de rééducation ou un centre pour enfants infirmes qui figure sur la liste de l'Annexe 10 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197);
- h) un centre de désintoxication dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- i) un service communautaire de santé mentale aux adultes dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, aux termes d'une entente conclue par écrit;
- j) un service de placement dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, conformément à une «Entente de service de coordination des placements» ou d'une autre entente conclue par écrit.

2 Un conseil régional de santé établi en vertu de la *Loi sur le ministère de la Santé* (L.R.O. 1980, chap. 280).

3 Une blanchisserie qui est exploitée exclusivement aux fins d'un hôpital ou plus.

4 Services alimentaires hospitaliers—Ontario Inc.

5 Toronto District Heating Corporation.

6 Fondation de la recherche sur la toxicomanie.

7 Les activités en Ontario de la Société canadienne de la Croix-Rouge, autres que la fourniture de services d'appoint à domicile pour les personnes âgées et de services d'aides familiales.

8 The Hospital Council of Metropolitan Toronto.

9 The Hospital Medical Records Institute.

10 The Ontario Cancer Institute.

11 The Ontario Cancer Treatment and Research Foundation.

12 The Ontario Mental Health Foundation.

13 The Toronto Institute of Medical Technology.

MINISTÈRE DE L'INDUSTRIE, DU COMMERCE ET DE LA TECHNOLOGIE

1 Metropolitan Toronto Convention Centre.

MINISTRY OF MUNICIPAL AFFAIRS

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) the collection, removal and disposal of garbage and other refuse for a municipality;
- (b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.

MINISTRY OF NATURAL RESOURCES

1. Conservation Authorities established under the *Conservation Authorities Act* (R.S.O. 1980, c. 85).

MINISTRY OF TOURISM AND RECREATION

- 1. St. Clair Parkway Commission.

MINISTRY OF TREASURY AND ECONOMICS

- 1. Ontario Municipal Employees Retirement Board.

MINISTÈRE DES AFFAIRES MUNICIPALES

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) la collecte, l'enlèvement et l'élimination des ordures ménagères et d'autres déchets pour le compte d'une municipalité;
- b) le maintien et l'exploitation d'autobus pour le transport de passagers aux termes d'une entente conclue avec une municipalité.

MINISTÈRE DES RICHESSES NATURELLES

1 Les offices de protection de la nature créés en vertu de la *Loi sur les offices de protection de la nature* (L.R.O. 1980, chap. 85).

MINISTÈRE DU TOURISME ET DES LOISIRS

- 1 St. Clair Parkway Commission.

MINISTÈRE DU TRÉSOR ET DE L'ÉCONOMIE

1 La Commission du régime de retraite des employés municipaux de l'Ontario.

Bill 154

An Act to provide for Pay Equity

The Hon. I. Scott
*Minister responsible for
Women's Issues*

1st Reading November 24th, 1986
2nd Reading February 3rd, 1987
3rd Reading
Royal Assent

*(Reprinted as amended by the
Administration of Justice Committee)*

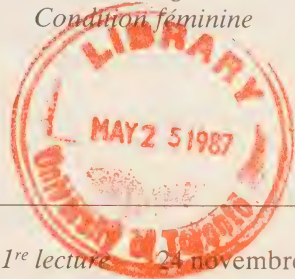
Projet de loi 154

Loi portant établissement de l'équité salariale

L'honorable I. Scott
*ministre délégué à la
Condition féminine*

1^{re} lecture 24 novembre 1986
2^e lecture 3 février 1987
3^e lecture
sanction royale

*(Réimprimé tel qu'il est modifié par le
Comité de l'administration de la justice)*



EXPLANATORY NOTES



The Bill provides for the redressing of systemic gender discrimination in compensation for work performed by employees in female job classes in the establishments of all employers in the public sector (a defined term) and those employers in the private sector (a defined term) who employ ten or more employees. Among the features of the Bill are the following:

1. Systemic gender discrimination will be identified through comparisons between female job classes (a defined term) and male job classes (a defined term) in terms of compensation and in terms of the value of the work performed. (Section 4)
2. A criterion for determining value is set out. (Section 5)
3. Tests for the achievement of pay equity are set out. (Section 6)
4. Employers must establish and maintain compensation practices that provide for pay equity. (Section 7)
5. Certain differences in compensation such as those resulting from legitimate seniority plans or red-circling are excluded in determining pay equity. (Section 8)
6. An employer cannot reduce compensation to achieve pay equity. (Subsection 9 (1))
7. Intimidation of persons who seek enforcement of the Act or who are participating, or may participate, in enforcement proceedings is prohibited. (Subsection 9 (2))
8. All employers in the public sector and those employers in the private sector who employ at least 100 employees will be required to develop and implement pay equity plans. Employers in the private sector with more than nine and fewer than 100 employees may prepare and implement pay equity plans but are not required to do so. (Parts II and III)
9. Different classes of employers will have different time limits for implementing pay equity. (Clause 13 (2) (e))
10. Provision is made for enriched compensation adjustments for employees in the lowest paid female job classes. (Subsection 13 (3))
11. Each employer will be required to make annual adjustments in rates of compensation equal to at least 1 per cent of the employer's payroll for the preceding year until pay equity is achieved. (Subsections 13 (4) and (5))
12. Employers in the public sector will have seven years from the effective date to implement pay equity plans. (Subsection 13 (7))
13. Pay equity plans bind an employer, the employees of an employer and the bargaining agent, if any, of the employees. (Subsection 13 (9))
14. The employer and the bargaining agent for employees in a bargaining unit will negotiate the pay equity plan for the bargaining unit. (Section 14)

NOTES EXPLICATIVES

Le projet de loi a pour objet d'éliminer la discrimination systémique entre les sexes en ce qui concerne la rétribution du travail effectué par les employés des catégories d'emplois à prédominance féminine qui oeuvrent dans les établissements de tous les employeurs du secteur public (terme défini) et dans ceux des employeurs du secteur privé (terme défini) qui ont à leur service dix employés ou plus. Voici certains points saillants du projet de loi :

1. Repérage de la discrimination systémique entre les sexes au moyen de comparaisons établies entre les catégories d'emplois à prédominance féminine (terme défini) et les catégories d'emplois à prédominance masculine (terme défini) en ce qui concerne la rétribution et la valeur du travail effectué. (Article 4)
2. Établissement d'un critère servant à déterminer la valeur du travail. (Article 5)
3. Établissement de méthodes permettant de déterminer si l'équité salariale est atteinte. (Article 6)
4. Obligation pour les employeurs d'établir et de maintenir des pratiques de rétribution assurant l'équité salariale. (Article 7)
5. Exclusion, pour la détermination de l'équité salariale, de certains écarts de rétribution tels ceux qui sont fondés sur des régimes légitimes d'ancienneté ou sur la pratique du «salaire étoilé». (Article 8)
6. Interdiction à l'employeur de diminuer la rétribution afin d'atteindre l'équité salariale. (Paragraphe 9 (1))
7. Interdiction d'intimider les personnes qui demandent l'application de la loi, qui participent ou pourraient participer à une instance relative à l'exécution de la loi. (Paragraphe 9 (2))
8. Obligation pour tous les employeurs du secteur public, et pour les employeurs du secteur privé qui ont au moins 100 employés à leur service, d'élaborer et de mettre en oeuvre des programmes d'équité salariale. Les employeurs du secteur privé qui ont plus de neuf et moins de 100 employés peuvent élaborer et mettre en oeuvre un programme d'équité salariale, mais ne sont pas obligés de le faire. (Parties II et III)
9. Dates limites différentes selon les différentes catégories d'employeurs pour atteindre l'équité salariale. (Alinéa 13 (2) e))
10. Rajustements plus importants pour les employés des catégories d'emplois à prédominance féminine dont le salaire est le plus bas. (Paragraphe 13 (3))
11. Obligation pour tous les employeurs d'effectuer des rajustements annuels de la rétribution équivalant à au moins 1 pour cent de leur feuille de paie pour l'année précédente, jusqu'à ce que l'équité salariale soit atteinte. (Paragraphes 13 (4) et (5))
12. Établissement d'une période de sept ans à la fin de laquelle les employeurs du secteur public devront avoir atteint l'équité salariale. (Paragraphe 13 (7))
13. Les programmes d'équité salariale lient l'employeur, les employés de l'employeur et leur agent négociateur, le cas échéant. (Paragraphe 13 (9))
14. Négociation d'un programme d'équité salariale relié à une unité de négociation entre l'employeur et l'agent négociateur des employés de l'unité de négociation. (Article 14)

- 
15. The employer will prepare the pay equity plan for employees who are not in a bargaining unit. (Subsection 14 (8) and section 15)
 16. Review officers will investigate and attempt to settle pay equity plans where an employer or an employer and a bargaining agent are unable to prepare a pay equity plan by the mandatory posting date (a defined term). Review officers will have the power to settle outstanding matters by order. (Section 16)
 17. A pay equity plan shall be deemed to have been approved by the Commission if no objections are filed with the Commission. (Subsections 15 (8) and 16 (5))
 18. Small private sector employers will have a transition period before they have to comply with the Act with respect to existing compensation practices in existing establishments (a defined term). (Section 21)
 19. The Pay Equity Commission of Ontario is established and will consist of the Pay Equity Office and the Pay Equity Hearings Tribunal. The Pay Equity Office will be responsible for administrative and enforcement matters. The Hearings Tribunal will be responsible for the hearing objections and complaints. (Sections 17, 22, 27 and 34) 
 20. Fines may be imposed for contraventions of certain provisions of the Act and orders of the Hearings Tribunal. (Section 26)
 21. Review officers will be appointed to investigate objections and complaints and to monitor the preparation and implementation of pay equity plans. (Section 35)
 22. Provision is made for a review of the Act beginning seven years after the effective date. (Section 38)

15. Élaboration par l'employeur d'un programme d'équité salariale à l'intention des employés qui n'appartiennent pas à une unité de négociation. (Paragraphe 14 (8) et article 15)
16. Des agents de révision mènent des enquêtes et tentent d'amener les parties à accepter un règlement lorsqu'un employeur ou un employeur et un agent négociateur ne peuvent élaborer un programme d'équité salariale à la date d'affichage obligatoire (terme défini). Les agents de révision ont le pouvoir de régler au moyen d'un ordre les questions en souffrance. (Article 16)
17. – Approbation réputée d'un plan d'équité salariale par la Commission en l'absence d'oppositions déposées auprès de celle-ci. (Paragraphe 15 (8) et 16 (5))
18. Période de transition accordée aux petits employeurs du secteur privé avant qu'ils ne soient tenus de se conformer à la loi en ce qui concerne les pratiques existantes de rétribution dans leurs établissements (terme défini) existants. (Article 21)
19. Création de la Commission de l'équité salariale de l'Ontario, qui se compose du Bureau de l'équité salariale et du Tribunal de l'équité salariale. Le Bureau de l'équité salariale est chargé des questions administratives et de l'application de la loi. Le Tribunal entend les oppositions et les plaintes. (Articles 17, 22, 27 et 34)
20. Imposition d'amendes pour les contraventions à certaines dispositions de la loi ou aux ordonnances du Tribunal. (Article 26)
21. Nomination d'agents de révision pour enquêter au sujet des oppositions et des plaintes et pour contrôler l'élaboration et la mise en oeuvre des programmes d'équité salariale. (Article 35)
22. Examen de la loi sept ans après son entrée en vigueur. (Article 38)

Bill 154**1987****An Act to provide
for Pay Equity****CONTENTS**

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Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario;

Projet de loi 154

1987

Loi portant établissement
de l'équité salariale

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Attendu qu'il est souhaitable que des mesures concrètes
soient prises aux fins d'éliminer la discrimination fondée sur le
sexe en matière de rétribution des employés oeuvrant dans
des catégories d'emplois à prédominance féminine en Ontario;

Préambule

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

General

Definitions

1.—(1) In this Act,

"agent
négociateur"
R.S.O. 1980,
c. 228

"bargaining agent" means a trade union as defined in the *Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees;

"convention
collective"

"collective agreement" means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment;

"Commis-
sion"

"Commission" means the Pay Equity Commission of Ontario established by this Act;

"rétribution"

"compensation" means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount;

"date
d'entrée
en vigueur"

"effective date" means the day this Act comes into force;

"employé"

"employee" does not include a student employed for his or her vacation period;

"établis-
sement"

"establishment" means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15;

"catégorie
d'emplois à
prédominance
féminine"

"female job class" means, except where there has been a decision that a job class is a male job class as described in clause (b) of the definition of "male job class",

- (a) a job class in which 60 per cent or more of the members are female,

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

PARTIE I

Dispositions générales

1 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

«agent de révision» Personne désignée comme agent de révision aux termes du paragraphe 35 (1). «review officer»

«agent négociateur» S'entend d'un syndicat au sens de la *Loi sur les relations de travail*, en sa qualité d'agent négociateur exclusif aux termes de cette loi à l'égard d'une ou de plusieurs unités de négociation au sein d'un établissement. S'entend en outre d'une organisation qui représente des employés auxquels s'applique la présente loi, si cette organisation est titulaire de droits exclusifs de négociation en vertu d'une autre loi à l'égard de ces employés. «bargaining agent»
L.R.O. 1980, chap. 228

«catégorie d'emplois» Les postes qui présentent, au sein d'un établissement, des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution, un même niveau de salaire ou une même gamme de taux de salaire. «job class»

«catégorie d'emplois à prédominance féminine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance masculine telle que décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance masculine» : «female job class»

a) d'une catégorie d'emplois dont 60 pour cent ou plus des membres sont des femmes;

b) d'une catégorie d'emplois qu'un agent de révision ou que le Tribunal décide de désigner comme catégorie d'emplois à prédominance féminine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance féminine.

«catégorie d'emplois à prédominance masculine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine telle que «male job class»

- (b) a job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class;

“zone
géogra-
phique”

“geographic division” means,

R.S.O. 1980,
c. 497

- (a) a county, territorial district or regional municipality described in the *Territorial Division Act*,

- (b) The Municipality of Metropolitan Toronto,

and for the purposes of this Act, the Territorial District of Sudbury and The Regional Municipality of Sudbury shall be considered to be one geographic division;

“Tribunal”

“Hearings Tribunal” means the Pay Equity Hearings Tribunal established by this Act;

“catégorie
d’emplois”

“job class” means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates;

“taux de
catégorie”

“job rate” means the highest rate of compensation for a job class;

“catégorie
d’emplois à
prédominance
masculine”

“male job class” means, except where there has been a decision that a job class is a female job class as described in clause (b) of the definition of “female job class”,

- (a) a job class in which 70 per cent or more of the members are male, or

- (b) a job class that a review officer or the Hearings Tribunal decides is a male job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a male job class;

“ministre”

“Minister” means the Minister of Labour;

“programme
d’équité
salariale”

“pay equity plan” means a document as described in section 13;

décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance féminine» :

- a) d'une catégorie d'emplois dont 70 pour cent ou plus des membres sont des hommes;
- b) - d'une catégorie d'emplois qu'un agent de révision ou que le Tribunal décide de désigner comme catégorie d'emplois à prédominance masculine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance masculine.

«Commission» La Commission de l'équité salariale de l'Ontario créée par la présente loi. «Commission»

«convention collective» Convention écrite conclue entre un employeur et un agent négociateur et qui traite des conditions d'emploi. «collective agreement»

«date d'entrée en vigueur» Le jour de l'entrée en vigueur de la présente loi. «effective date»

«employé» Sont exclus les étudiants employés pendant leurs vacances. «employee»

«établissement» Tous les employés d'un employeur employés dans une même zone géographique ou des zones géographiques convenues aux termes de l'article 14 ou déterminées aux termes de l'article 15. «establishment»

«ministre» Le ministre du Travail. «Minister»

«programme d'équité salariale» Document décrit à l'article 13. «pay equity plan»

«règlements» Les règlements pris en application de la présente loi. «regulations»

«rétribution» Tous les paiements et avantages versés ou accordés à la personne qui exerce des fonctions lui donnant droit au versement d'une somme fixe ou vérifiable, ou au profit de cette personne. «compensation»

«secteur privé» Tous les employeurs qui ne font pas partie du secteur public. «private sector»

«secteur public» Tous les employeurs qui sont mentionnés à l'annexe. «public sector»

- "secteur privé" "private sector" means all of the employers who are not in the public sector;
- "secteur public" "public sector" means all of the employers who are referred to in the Schedule;
- "règlements" "regulations" means the regulations made under this Act;
- "agent de révision" "review officer" means a person designated as a review officer under subsection 35 (1).
- Posting (2) Where this Act requires that a document be posted in the work place, the employer shall post a copy of the document in prominent places in each work place for the establishment to which the document relates in such a manner that it may be read by all of the employees in the work place.
- Idem (3) The employer shall provide a copy of every document posted in the work place under this Act,
- (a) to the bargaining agent, if any, that represents the employees who are affected by the document;
 - (b) to any employee who requests a copy of the document, if the employee is not represented by a bargaining agent and the employee is affected by the document.
- Calculation of number of employees (4) If Part II or III applies to an employer, a reference in this Act to the number of employees of the employer shall be deemed to be a reference to the average number of employees employed in Ontario by the employer during the twelve-month period preceding the effective date or during the period from the day the first employee commenced employment in Ontario with the employer until the effective date, whichever period is shorter.
- Decisions re job classes (5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of

«taux de catégorie» Taux de rétribution le plus élevé relié à une catégorie d'emplois donnée. «job rate»

«Tribunal» Le Tribunal de l'équité salariale créé par la présente loi. «Hearings Tribunal»

«zone géographique» S'entend : «geographic division»

- a) d'un comté, d'un district territorial ou d'une municipalité régionale au sens de la *Loi sur la division territoriale*;
 - b) de la municipalité de la communauté urbaine de Toronto.

L.R.O. 1980, chap. 497

Pour l'application de la présente loi, le district territorial de Sudbury et la municipalité régionale de Sudbury sont considérés comme formant une seule zone géographique.

(2) Lorsque la présente loi exige l'affichage d'un écrit sur les lieux de travail, l'employeur en affiche un exemplaire dans des endroits bien en vue dans chaque lieu de travail de l'établissement auquel se rapporte l'écrit, de façon que tous les employés puissent le consulter. Affichage

(3) L'employeur fournit une copie de chaque écrit affiché sur les lieux de travail aux termes de la présente loi : Idem

- a) à l'agent négociateur, le cas échéant, qui représente les employés qui sont concernés par l'écrit;
- b) à tout employé qui demande une copie de l'écrit, si cet employé n'est pas représenté par un agent négociateur et que l'employé est concerné par l'écrit.

(4) Si les parties II ou III s'appliquent à un employeur, la mention dans la présente loi du nombre d'employés de l'employeur est réputée une mention du nombre moyen d'employés de l'employeur en Ontario au cours de la plus courte des périodes suivantes : soit la période de douze mois qui précède la date d'entrée en vigueur, soit la période qui se situe entre la date du début en Ontario de l'emploi, au service de l'employeur, du premier employé et la date d'entrée en vigueur. Calcul du nombre d'employés

(5) Aux fins de décider si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, ou de convenir de la prédominance d'une catégorie d'emplois, il est tenu compte du sexe des personnes qui exercent traditionnellement ces Détermination de la catégorie d'emplois

work and such other criteria as may be prescribed by the regulations.



One-member
job classes

(6) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule, salary grade or range of salary rates are not similar to those of any other position in the establishment.

Disabled,
etc.,
not to be
classed
separately

(7) A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties and responsibilities, require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates only because the needs of the occupant of the position have been accommodated for the purpose of complying with the *Human Rights Code, 1981*.

1981, c. 53

Combined
establish-
ments

2.—(1) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of an equal pay plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Idem

(2) Two or more employers who are municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining agent, the employees, may agree that, for the purposes of an equal pay plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Employers
to implement
plans

(3) Notwithstanding that the employees of two or more employers are considered to be one establishment under subsection (1) or (2), each employer is responsible for implementing and maintaining the equal pay plan with respect to the employer's employees.

Application

3.—(1) This Act applies to all employers in the private sector in Ontario who employ ten or more employees, all employers in the public sector, the employees of employers to whom this Act applies and to their bargaining agents, if any.



emplois, des stéréotypes sexuels attachés à des domaines d'emplois, ainsi que des autres critères qui peuvent être prescrits par les règlements.



(6) Une catégorie d'emplois peut ne comprendre qu'un seul poste, si celui-ci est d'un caractère unique au sein de l'établissement en raison du fait que les fonctions, les responsabilités, les qualités requises, les procédures de recrutement ou la grille de rétribution, le niveau de salaire ou la gamme de taux de salaire qui lui sont reliés ne sont pas semblables à ceux qui sont reliés aux autres postes au sein de l'établissement.

Catégorie
d'emplois
à membre
unique

(7) Un poste ne doit pas, uniquement à cause du fait qu'il a été tenu compte des besoins de son titulaire afin d'observer le *Code des droits de la personne* (1981), être placé dans une catégorie d'emplois différente de celle d'autres postes du même établissement qui présentent des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution, un même niveau de salaire ou une même gamme de taux de salaire.

Interdiction
de classer les
personnes
handicapées,
etc.,
séparément
1981,
chap. 53

2 (1) Lorsque deux employeurs ou plus rencontrent l'agent négociateur ou les agents négociateurs de leurs employés en vue de négocier une convention centrale, ils peuvent convenir qu'aux fins d'un programme d'égalité des salaires, tous les employés ne constituent qu'un seul établissement et tous les employeurs sont réputés un seul employeur.

Établisse-
ments
combinés

(2) Deux employeurs ou plus qui sont des municipalités situées dans la même zone géographique et l'agent négociateur ou les agents négociateurs de leurs employés, ou, s'il n'y a pas d'agent négociateur, les employés, peuvent convenir qu'aux fins d'un programme d'égalité des salaires, les employés ne constituent qu'un seul établissement, et les employeurs sont réputés un seul employeur.

Idem

(3) Malgré le fait que des employés de deux ou plusieurs employeurs sont réputés ne constituer qu'un seul établissement aux termes du paragraphe (1) ou (2), chaque employeur est responsable de la mise en oeuvre et du maintien du programme d'égalité des salaires visant les employés de l'employeur.

Les
employeurs
responsables
des
programmes

3 (1) La présente loi s'applique à tous les employeurs du secteur privé en Ontario qui emploient dix employés ou plus, à tous les employeurs du secteur public, aux employés des employeurs auxquels s'applique la présente loi, ainsi qu'aux agents négociateurs de ces employés, le cas échéant.

Champ
d'application



Idem

(2) If at any time after the coming into force of this Act an employer employs ten or more employees in Ontario, this Act applies with respect to the employer although the number of employees is subsequently reduced to fewer than ten.

Purpose

4.—(1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

Identification
of systemic
gender dis-
crimination


(2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed.

Value
determination

5.—(1) For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.



Idem,
disabled
employees,
etc.
1981, c. 53

(2) The fact that an employee's needs have been accommodated for the purpose of complying with the *Human Rights Code, 1981* shall not be considered in determining the value of work performed. 

Achievement
of pay equity

6.—(1) For the purposes of this Act, pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value.

Idem

(2) Where there is no male job class with which to make a comparison for the purposes of subsection (1), pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate of a male job class in the same establishment that at the time of comparison had a higher job rate but performs work of lower value than the female job class.

Basis of
comparison

(3) If more than one comparison is possible between a female job class in an establishment and male job classes in the same establishment, pay equity is achieved when the job

(2) Lorsqu'un employeur emploie dix employés ou plus en Ontario après l'entrée en vigueur de la présente loi, celle-ci s'applique à lui, même si le nombre de ses employés est par la suite réduit à moins de dix. Idem

4 (1) La présente loi a pour objet d'éliminer la discrimination systémique entre les sexes, en ce qui concerne la rétribution du travail effectué par les employés dans les catégories d'emplois à prédominance féminine. Objet

(2) Le repérage de la discrimination systémique entre les sexes en ce qui concerne la rétribution se fait au moyen de comparaisons établies entre chacune des catégories d'emplois à prédominance féminine et les catégories d'emplois à prédominance masculine dans un même établissement au niveau de la rétribution et de la valeur du travail accompli. Repérage de la discrimination systémique entre les sexes

5 (1) Pour l'application de la présente loi, le critère qui sert à déterminer la valeur du travail se fonde sur l'habileté, l'effort et la responsabilité qu'exige normalement l'accomplissement de ce travail, ainsi que sur les conditions dans lesquelles il est normalement effectué. Détermination de la valeur

(2) Le fait qu'il a été tenu compte des besoins d'un employé afin d'observer le *Code des droits de la personne (1981)* n'est pas pris en considération dans la détermination de la valeur du travail effectué. Idem, personnes handicapées, etc. 1981, chap. 53

6 (1) Pour l'application de la présente loi, l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie relié à une catégorie d'emplois à prédominance masculine dans le même établissement, si le travail effectué au niveau des deux catégories est de valeur égale ou comparable. Équité salariale atteinte

(2) S'il n'existe aucune catégorie d'emplois à prédominance masculine avec laquelle peut être établie une comparaison pour l'application du paragraphe (1), l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie d'une catégorie d'emplois à prédominance masculine du même établissement qui avait, au moment de la comparaison, un taux de catégorie supérieur, mais qui effectue un travail d'une valeur inférieure à celui de la catégorie d'emplois à prédominance féminine. Idem

(3) Si une catégorie d'emplois à prédominance féminine dans un établissement et des catégories d'emplois à prédominance masculine dans le même établissement se prêtent à plusieurs comparaisons, l'équité salariale est atteinte lorsque le Fondement de la comparaison

rate for the female job class is at least as great as the job rate for the male job class,

- (a) with the lowest job rate, if the work performed in both job classes is of equal or comparable value;
or
- (b) with the highest job rate, if the work performed in the male job class is of less value.

Idem

(4) Comparisons required by this Act,

- (a) for job classes inside a bargaining unit, shall be made between job classes in the bargaining unit; and
- (b) for job classes outside any bargaining unit, shall be made between job classes that are outside any bargaining unit.

Idem

(5) If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment.

Groups
of jobs

(6) An employer may treat job classes that are arranged in a group of jobs as one female job class if 60 per cent or more of the employees in the group are female.

Idem

(7) An employer shall treat job classes that are arranged in a group of jobs as one female job class if a review officer or the Commission decides that the group should be treated as one female job class.

Idem

(8) An employer may, with the agreement of the bargaining agent, if any, for the employees of the employer, decide to treat job classes that are arranged in a group of jobs as one female job class.

taux de catégorie relié à la catégorie d'emplois à prédominance féminine est au moins égal au taux de catégorie relié à la catégorie d'emplois à prédominance masculine :

- a) qui a le taux de catégorie le plus bas, si le travail effectué dans les deux catégories d'emplois est de valeur égale ou comparable;
- b) qui a le taux de catégorie le plus élevé, si le travail effectué dans la catégorie d'emplois à prédominance masculine est de valeur inférieure.

(4) Les comparaisons exigées par la présente loi sont Idem établies :

- a) entre des catégories d'emplois qui appartiennent à l'unité de négociation, en ce qui concerne les catégories d'emplois appartenant à une unité de négociation;
- b) entre des catégories d'emplois qui n'appartiennent à aucune unité de négociation, en ce qui concerne les catégories d'emplois n'appartenant pas à une unité de négociation.

(5) Lorsque, après l'application du paragraphe (4), il ne se trouve aucune catégorie d'emplois à prédominance masculine dans laquelle s'effectue un travail de valeur égale ou comparable au travail qui s'effectue dans la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison, celle-ci est comparée aux catégories d'emplois à prédominance masculine de l'ensemble de l'établissement. Idem

(6) L'employeur peut traiter des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine si 60 pour cent ou plus des employés du groupe sont des femmes. Groupes d'emplois

(7) L'employeur traite des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine si un agent de révision ou la Commission décide que le groupe doit être traité comme une catégorie d'emplois à prédominance féminine. Idem

(8) L'employeur peut, avec l'assentiment de l'agent négociateur des employés de l'employeur, le cas échéant, décider de traiter des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine. Idem


Job rate,
value of
work

(9) Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group and the value of the work performed by that individual job class is the value of the work performed by the group.

Definition

(10) In this section, "group of jobs" means a series of job classes that bear a relationship to each other because of the nature of the work required to perform the work of each job class in the series and that are organized in successive levels.

Pay equity
required

7.—(1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer. 

Idem

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1).

Exclusions
from
determination

8.—(1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

- (a) a formal seniority system that does not discriminate on the basis of gender;
- (b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
- (c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
- (d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or

(9) Lorsque l'employeur traite un groupe d'emplois comme une catégorie d'emplois à prédominance féminine, le taux de catégorie de la catégorie d'emplois particulière au sein du groupe qui comporte le plus grand nombre d'employés est le taux de catégorie de ce groupe. La valeur du travail effectué par la catégorie particulière est la valeur du travail effectué par le groupe.

Taux de
catégorie,
valeur du
travail

(10) Dans le présent article, «groupe d'emplois» s'entend d'une série de catégories d'emplois qui sont reliées entre elles en raison de la nature des tâches que comporte chaque catégorie d'emplois de la série, et réparties en grades consécutifs.

Définition

7 (1) L'employeur établit et maintient des pratiques de rétribution assurant l'équité salariale dans chacun de ses établissements.

Équité
salariale
obligatoire

(2) Il est interdit à l'employeur et à l'agent négociateur de négocier en vue d'obtenir l'établissement ou le maintien de pratiques de rétribution qui, si elles étaient adoptées, entraîneraient une contravention au paragraphe (1). Il leur est également interdit de convenir de telles pratiques.

Idem

8 (1) La présente loi n'a pas pour effet d'empêcher un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine, si l'employeur peut démontrer que l'écart résulte :

Exceptions

- a) d'un système organisé d'ancienneté exempt de discrimination fondée sur le sexe;
- b) d'un programme d'affectations temporaires de formation ou de perfectionnement des employés dont peuvent se prévaloir également les employés féminins et les employés masculins et qui mène à l'avancement de ceux qui y participent;
- c) d'un régime de rétribution au mérite fondé sur un système organisé d'évaluation du rendement préalablement porté à la connaissance des employés et exempt de discrimination fondée sur le sexe;
- d) de la pratique de gestion du personnel dite du «salaire étoilé» lorsque, à la suite d'un processus non sexiste de réévaluation, un poste a été déclassé et que la rétribution de l'employé a été bloquée ou que toute augmentation de sa rétribution a été suspendue jusqu'à ce que la rétribution reliée au poste déclassé devienne égale ou supérieure à la rétribution de l'employé;

- (e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Idem

(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

Idem

(3) A position that an employer designates as a position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a pay equity plan.

Idem

(4) A position shall not be designated under subsection (3) if,

- (a) the work is performed for at least one-third of the normal work period that applies to similar full-time work;
- (b) the work is performed on a seasonal basis in the same position for the same employer; or
- (c) the work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work.

Reduction of compensation prohibited

2.—(1) An employer shall not reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve pay equity.

Intimidation prohibited

(2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

- (a) because the person may participate, or is participating, in a proceeding under this Act;

- e) de l'absence de main-d'oeuvre qualifiée qui engendre une inflation temporaire de la rétribution provoquée par la difficulté qu'éprouve l'employeur à recruter des employés satisfaisant aux exigences des postes au sein d'une catégorie d'emplois.

(2) Lorsque l'équité salariale est atteinte dans un établissement, la présente loi n'a pas pour effet d'empêcher des écarts de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine si l'employeur peut démontrer que l'écart résulte de différences au niveau du pouvoir de négociation. Idem

(3) Aux fins de déterminer si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, il n'est pas nécessaire de tenir compte des postes que l'employeur désigne comme postes qui procurent de l'emploi occasionnel. Les postes ainsi désignés peuvent également être exclus lors des rajustements de la rétribution effectués en vertu d'un programme d'équité salariale. Idem

(4) Un poste n'est pas désigné aux termes du paragraphe (3) si, selon le cas : Idem

- a) la durée du travail est égale ou supérieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps;
- b) le travail est effectué sur une base saisonnière pour le compte du même employeur et dans le cadre du même poste;
- c) le travail est effectué sur une base régulière et continue, quoique durant une période inférieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps.

2 (1) L'employeur ne doit pas diminuer la rétribution payable à un employé ni réduire le taux de rétribution rattaché à un poste afin d'atteindre l'équité salariale. Réduction de la rétribution interdite

(2) Il est interdit à l'employeur, à l'employé, à l'agent négociateur, ainsi qu'à leurs mandataires d'intimider, de contraindre, de pénaliser une personne ou d'exercer une discrimination à son égard pour l'un des motifs suivants : Manoeuvres d'intimidation interdites

- a) elle participe ou pourrait participer à une instance intentée en vertu de la présente loi;

- (b) because the person has made, or may make, a disclosure required in a proceeding under this Act;
- (c) because the person is exercising, or may exercise, any right under this Act; or
- (d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.

Compensation
adjustments

(3) Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms.

PART II

Implementation: Public Sector and Large Private Sector Employers

Definition

10. In this Part, "mandatory posting date" means,

- (a) the second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date;
- (b) the third anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date;
- (c) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20; and
- (d) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least

- b) elle a déjà fait ou pourrait faire une divulgation exigée lors d'une instance intentée en vertu de la présente loi;
- c) elle exerce ou pourrait exercer un droit en vertu de la présente loi;
- ➡ d) elle a déjà agi ou pourrait agir conformément à la présente loi, aux règlements ou à un ordre ou une ordonnance pris en vertu de la présente loi, ou a déjà demandé ou pourrait demander l'exécution de la présente loi, des règlements ou d'un ordre ou d'une ordonnance pris en vertu de la présente loi.

(3) S'il est nécessaire d'augmenter le taux de rétribution d'une catégorie d'emplois afin d'atteindre l'équité salariale, tous les postes dans cette catégorie d'emplois reçoivent le même taux de rajustement, en termes absolus. ➡

Rajustements
de la
rétribution

PARTIE II

Mise en oeuvre : employeurs du secteur public et grands
employeurs du secteur privé

10 Dans la présente partie, «date d'affichage obligatoire» s'entend :

Définition

- ➡ a) du deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur public et en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur; ➡
- b) du troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur; ➡
- c) du quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20;
- d) du cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cin-


ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Application



11.—(1) This Part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees and those employers in the private sector who post a notice under section 20.

Idem

(2) This Part does not apply to an employer who does not have employees on the effective date. 

Comparison
of
job classes

12. Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class.

Pay equity
plans
required

13.—(1) Documents, to be known as pay equity plans, shall be prepared in accordance with this Part to provide for pay equity for the female job classes in each establishment of every employer to whom this Part applies and, without restricting the generality of the foregoing,

- (a) shall identify the establishment to which the plan applies; and
- (b) shall identify all job classes which formed the basis of the comparisons under section 12.

Idem

(2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment,

- (a) shall describe the gender-neutral comparison system used for the purposes of section 12;
- (b) shall set out the results of the comparisons carried out under section 12;
- (c) shall identify all positions and job classes in which differences in compensation are permitted by sub-

quante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20.

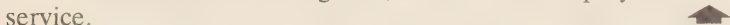


11 (1) La présente partie s'applique à tous les employeurs du secteur public et aux employeurs du secteur privé qui, à la date d'entrée en vigueur, ont 100 employés ou plus à leur service, ainsi qu'aux employeurs du secteur privé qui affichent l'avis visé à l'article 20.

Champ
d'application

(2) La présente partie ne s'applique pas à l'employeur qui, à la date d'entrée en vigueur, n'a aucun employé à son service.

Idem



12 Avant la date d'affichage obligatoire, l'employeur auquel s'applique la présente partie établit des comparaisons, au moyen d'un système non sexiste de comparaison, entre les catégories d'emplois à prédominance féminine de chacun de ses établissements et les catégories d'emplois à prédominance masculine des mêmes établissements aux fins de déterminer si l'équité salariale existe à l'égard de chaque catégorie d'emplois à prédominance féminine.

Comparaison
des catégories
d'emplois

13 (1) Il est élaboré, conformément à la présente partie, des documents connus sous l'appellation de programmes d'équité salariale, visant à assurer l'équité salariale à l'égard des catégories d'emplois à prédominance féminine au sein de chacun des établissements de chaque employeur auquel s'applique la présente partie. Ces programmes comprennent notamment :

Programmes
obligatoires
d'équité
salariale

- a) le repérage de l'établissement visé par le programme;
- b) le repérage de toutes les catégories d'emplois sur lesquelles se fondent les comparaisons visées à l'article 12.

(2) Si un établissement comporte à la fois des catégories d'emplois à prédominance féminine et des catégories d'emplois à prédominance masculine, chaque programme d'équité salariale relatif à l'établissement :

Idem

- a) expose le système non sexiste de comparaison utilisé pour l'application de l'article 12;
- b) énonce les résultats des comparaisons établies aux termes de l'article 12;
- c) repère tous les postes et toutes les catégories d'emplois dans lesquels les paragraphes 8 (1) ou (3) per-

section 8 (1) or (3) and give the reasons for relying on such subsection;

- (d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 12, describe how the compensation in those job classes will be adjusted to achieve pay equity; and
- (e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,
 - (i) the second anniversary of the effective date, in respect of employers in the public sector,
 - (ii) the third anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date,
 - (iii) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,
 - (iv) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and
 - (v) the sixth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Idem

(3) A pay equity plan shall provide that the female job class or classes that have, at any time during the implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until

mettent des écarts de rétribution, et donne les motifs du recours à ces paragraphes;

- d) expose, à l'égard de toutes les catégories d'emplois à prédominance féminine où l'équité salariale n'existe pas selon les comparaisons établies aux termes de l'article 12, le mode de rajustement de la rétribution choisi pour atteindre l'équité salariale;
- e) énonce la date à laquelle seront effectués les premiers rajustements de la rétribution en vertu du programme. Cette date ne peut être postérieure :
 - (i) au deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur public,
 - (ii) au troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur,
 - (iii) au quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur,
 - (iv) au cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20,
 - (v) au sixième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cinquante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20.

(3) Un programme d'équité salariale prévoit qu'il sera accordé à la catégorie ou aux catégories d'emplois à prédominance féminine qui ont, pendant la période de mise en oeuvre du programme, le taux de catégorie le plus bas, une augmentation du taux de rétribution aux termes du programme qui est supérieure aux augmentations accordées aux termes du programme aux autres catégories d'emplois à prédominance féminine, jusqu'à ce que le taux de catégorie de la catégorie

Idem

such time as the job rate for the female job class or classes receiving the greater increases is equal to the lesser of,

- (a) the job rate required to achieve pay equity; and
- (b) the job rate of the female job class or classes entitled to receive an adjustment under the plan with the next lowest job rate.

Minimum
adjustments

(4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2) (e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and
- (b) the amount required to achieve pay equity.

Idem

(5) Adjustments shall be made in compensation under a pay equity plan on each anniversary of the first adjustments in compensation under the plan and shall be such that during the twelve-month period following each anniversary the combined compensation payable under all pay equity plans of the employer shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the anniversary; and
- (b) the amount required to achieve pay equity.

Maximum
adjustments

(6) Except for the purpose of making retroactive adjustments in compensation under a pay equity plan or unless

ou des catégories d'emplois à prédominance féminine qui reçoivent l'augmentation supérieure soit égal au moins élevé des taux suivants :

- a) le taux de catégorie nécessaire pour atteindre l'équité salariale;
- b) le taux de catégorie de la catégorie ou des catégories d'emplois à prédominance féminine ayant droit à un rajustement aux termes du programme et dont le taux de catégorie se classe immédiatement au-dessus de celui de la catégorie ou des catégories d'emplois visées.

(4) Les premiers rajustements de la rétribution en vertu d'un programme d'équité salariale sont versables à la date prévue à l'alinéa (2) e) et sont tels que la rétribution combinée payable aux termes de l'ensemble des programmes d'équité salariale de l'employeur au cours des douze mois qui suivent les premiers rajustements est majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

Rajustements
minimaux

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède les premiers rajustements;
- b) la somme nécessaire pour atteindre l'équité salariale.



(5) Chaque anniversaire des premiers rajustements de la rétribution en vertu d'un programme d'équité salariale, des rajustements à la rétribution sont effectués en vertu du programme. Ces rajustements additionnels sont effectués de façon que la rétribution combinée payable aux termes de l'ensemble des programmes d'équité salariale de l'employeur au cours de la période de douze mois qui suit chaque anniversaire soit majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

Idem

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède l'anniversaire;
- b) la somme nécessaire pour atteindre l'équité salariale.

(6) Sauf dans le but d'effectuer des rajustements rétroactifs à la rétribution en vertu d'un programme d'équité salariale ou

Rajustements
maximaux

required to do so by an order described in clause 37 (g), nothing in this Act requires an employer to increase compensation payable under the pay equity plans of the employer during a twelve-month period in an amount greater than 1 per cent of the employer's payroll during the preceding twelve-month period.

Exception

(7) Notwithstanding subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the seventh anniversary of the effective date.

Definition

(8) In this section, "payroll" means the total of all wages and salaries payable to the employees in Ontario of the employer.

Pay equity plan binding

(9) A pay equity plan that is approved under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(10) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Deemed compliance

(11) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the effective date.

Establishments with bargaining units

14.—(1) In an establishment in which any of the employees are represented by a bargaining agent, there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit.

Bargaining unit plans

(2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,

- (a) the gender-neutral comparison system used for the purposes of section 12; and

à moins qu'il y soit tenu aux termes d'une ordonnance visée à l'alinéa 37 g), la présente loi n'a pas pour effet d'obliger un employeur à majorer la rétribution payable aux termes des programmes d'équité salariale de l'employeur au cours d'une période de douze mois d'une somme qui représente plus de 1 pour cent de la feuille de paie de l'employeur relative à la période précédente de douze mois.

(7) Malgré le paragraphe (6), les programmes d'équité salariale du secteur public prévoient les rajustements de la rétribution de manière à ce que ces programmes soient pleinement mis en oeuvre au plus tard le septième anniversaire de la date d'entrée en vigueur.

Exception

(8) Dans le présent article, «feuille de paie» s'entend de la totalité des salaires et traitements payables aux employés de l'employeur en Ontario.

Définition

(9) Le programme d'équité salariale approuvé aux termes de la présente partie lie l'employeur et les employés auxquels il s'applique, ainsi que leur agent négociateur, le cas échéant.

Le programme d'équité salariale lie les parties

(10) Le programme d'équité salariale approuvé aux termes de la présente partie l'emporte sur toute convention collective pertinente. Les rajustements des taux de rétribution qu'exige le programme sont réputés incorporés aux conventions collectives pertinentes et en faire partie intégrante.

Le programme l'emporte

(11) L'employeur qui prépare et met en oeuvre un programme d'équité salariale aux termes de la présente partie est réputé ne pas contrevenir au paragraphe 7 (1) en ce qui concerne les employés visés par le plan ou les plans qui s'appliquent aux employés, mais seulement en ce qui a trait aux pratiques de rétribution qui existaient immédiatement avant la date d'entrée en vigueur.

Conformité réputée

14 (1) Il doit être élaboré, dans tout établissement où des employés sont représentés par un agent négociateur, un programme d'équité salariale relié à chaque unité de négociation, ainsi qu'un programme d'équité salariale relié à la partie de l'établissement dont les membres n'appartiennent pas à une unité de négociation.

Établissements dotés d'unités de négociation

(2) L'employeur et l'agent négociateur d'une unité de négociation négocient de bonne foi et s'efforcent de convenir, avant à la date d'affichage obligatoire :

Programmes reliés à une unité de négociation

- a) du système non sexiste de comparaison utilisé pour l'application de l'article 12;

(b) a pay equity plan for the bargaining unit.

Idem

(3) As part of the negotiations required by subsection (2), the employer and the bargaining agent may agree, for the purposes of the pay equity plan,

(a) that the establishment of the employer includes two or more geographic divisions; and

(b) that a job class is a female job class or a male job class.

Posting
of plan

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the work place.

Deemed
approval and
first
adjustments

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Failure
to agree

(6) Where an employer and a bargaining agent fail to agree on a pay equity plan by the mandatory posting date, the employer, forthwith after that date, shall give notice of the failure to the Commission.

Idem

(7) Subsection (6) does not prevent the bargaining agent from notifying the Commission of a failure to agree on a pay equity plan by the mandatory posting date.

Non-
bargaining
unit plan

(8) An employer shall prepare a pay equity plan for that part of the employer's establishment that is outside any bargaining unit in the establishment and, on or before the mandatory posting date, shall post a copy of the plan in the work place.

Idem

(9) Subsections 15 (2) to (8) apply to a pay equity plan described in subsection (8).

Establish-
ments
without
bargaining
units

15.—(1) In an establishment where no employee is represented by a bargaining agent, the employer shall prepare a pay equity plan for the employer's establishment and the employer, on or before the mandatory posting date, shall post a copy of the plan in the work place.

- b) d'un programme d'équité salariale relié à l'unité de négociation.

(3) Dans le cadre des négociations exigées par le paragraphe (2), l'employeur et l'agent négociateur peuvent, pour les fins du programme d'équité salariale, convenir de ce qui suit : Idem

- a) que l'établissement de l'employeur comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(4) L'employeur et l'agent négociateur qui ont convenu d'un programme d'équité salariale y apposent leur signature. À la date d'affichage obligatoire ou antérieurement à celle-ci, l'employeur affiche une copie du programme sur les lieux de travail. Affichage du programme

(5) Le programme d'équité salariale qui porte la signature de l'employeur et celle de l'agent négociateur est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale. Approbation réputée et premiers rajustements

(6) Si l'employeur et l'agent négociateur n'ont pas convenu d'un programme d'équité salariale à la date d'affichage obligatoire, l'employeur en avise sans délai la Commission. Absence d'entente

(7) Le paragraphe (6) n'a pas pour effet d'empêcher l'agent négociateur d'aviser la Commission du défaut de convenir d'un programme d'équité salariale à la date d'affichage obligatoire ou antérieurement à celle-ci. Idem

(8) L'employeur élabore un programme d'équité salariale destiné aux employés de son établissement qui n'appartiennent à aucune des unités de négociation de l'établissement. À la date d'affichage obligatoire ou antérieurement à celle-ci, il affiche une copie du programme sur les lieux de travail. Programme non relié à une unité de négociation

(9) Les paragraphes 15 (2) à (8) s'appliquent au programme d'équité salariale décrit au paragraphe (8). Idem

15 (1) L'employeur dont l'établissement ne compte aucun employé représenté par un agent négociateur élabore un programme d'équité salariale à l'égard de son établissement. L'employeur, à la date d'affichage obligatoire ou antérieurement à celle-ci, affiche une copie du programme sur les lieux de travail. Établissements dépourvus d'unités de négociation

- Idem (2) For the purposes of a pay equity plan required by this section or subsection 14 (8), the employer may decide,
- (a) that the establishment of the employer includes two or more geographic divisions; and
 - (b) that a job class is a female job class or a male job class.
- Idem (3) An agreement under section 14 between an employer and a bargaining agent shall not affect any pay equity plan required by this section or subsection 14 (8).
- Employee review (4) The employees to whom a pay equity plan required by this section or subsection 14 (8) applies shall have until the ninetieth day after the mandatory posting date to review and submit comments to the employer on the plan.
- Changes (5) If as a result of comments received during the review period referred to in subsection (4), the employer is of the opinion that a pay equity plan should be changed, the employer may change the plan.
- Posting of notice (6) Not later than seven days after the end of the review period referred to in subsection (4), the employer shall post in the work place a notice stating whether the pay equity plan has been amended under this section and, if the plan has been amended, the employer shall also post a copy of the amended plan with the amendments clearly indicated.
- Objections (7) Any employee or group of employees to whom a pay equity plan applies, within thirty days following a posting in respect of the plan under subsection (6), may file a notice of objection with the Commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4).
- Deemed approval and first adjustments (8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

(2) Pour l'application du programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8), l'employeur peut décider :

Idem

- a) que son établissement comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(3) L'entente intervenue en vertu de l'article 14 entre l'employeur et l'agent négociateur n'a pas d'incidence sur le programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8).

Idem

(4) Les employés visés par un programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8) peuvent examiner le programme et présenter leurs observations à l'employeur jusqu'au quatre-vingt-dixième jour suivant la date d'affichage obligatoire.

Examen par l'employé

(5) L'employeur qui, à la suite des observations reçues au cours de la période d'examen visée au paragraphe (4), est d'avis que des modifications au programme d'équité salariale s'imposent, peut y apporter des modifications.

Modification

(6) Dans les sept jours qui suivent la fin de la période d'examen visée au paragraphe (4), l'employeur affiche sur les lieux de travail un avis qui indique si le programme d'équité salariale a été modifié ou non aux termes du présent article. Si le programme a été modifié, l'employeur affiche également une copie du programme modifié sur laquelle les modifications sont clairement indiquées.

Affichage d'un avis

(7) Dans les trente jours de l'affichage concernant un programme d'équité salariale aux termes du paragraphe (6), l'employé ou le groupe d'employés visés par le programme peuvent déposer un avis d'opposition auprès de la Commission, qu'ils aient présenté ou non leurs observations à l'employeur aux termes du paragraphe (4).

Oppositions

(8) S'il n'est déposé aucune opposition à un programme d'équité salariale auprès de la Commission en vertu du paragraphe (7), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation réputée et premiers rajustements

Investigation
by review
officer and
settlement

16.—(1) If the Commission,

- (a) is advised by an employer or a bargaining agent that no agreement has been reached on a pay equity plan under section 14; or
- (b) receives a notice of objection under subsection 15 (7),

a review officer shall investigate the matter and endeavour to effect a settlement.

Orders by
review officer

(2) If the review officer is unable to effect a settlement as provided for in subsection (1), he or she shall, by order, decide all outstanding matters.

Posting of
plan

(3) Where a review officer effects a settlement under subsection (1) or makes an order under subsection (2), the employer shall forthwith post in the work place a copy of the pay equity plan that reflects the settlement or order.

Objections

(4) Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the Commission within thirty days of the posting as follows:

1. If the plan relates to a bargaining unit, objections may be filed only if the review officer has made an order under subsection (2) and only the employer or the bargaining agent for the bargaining unit may file objections.
2. If the plan does not relate to a bargaining unit and a review officer effected a settlement under subsection (1) with the agreement of the objector who filed the objection under subsection 15 (7), only an employee or group of employees to whom the plan applies, other than the objector, may file an objection.
3. If the plan does not relate to a bargaining unit and a review officer has made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection.

16 (1) Lorsque la Commission :Enquête par
l'agent de
révision et
règlement

- a) ou bien est avisée par l'employeur ou l'agent négociateur qu'aucune entente n'est intervenue au sujet du programme d'équité salariale aux termes de l'article 14;
- b) ou bien reçoit l'avis d'opposition visé au paragraphe 15 (7),

un agent de révision mène une enquête à ce sujet et tente d'amener les parties à accepter un règlement.

(2) Si l'agent de révision ne peut parvenir à amener les parties à accepter le règlement visé au paragraphe (1), il règle toutes les questions en souffrance au moyen d'un ordre.

Ordre de
l'agent de
révision

(3) Si l'agent de révision amène les parties à accepter un règlement aux termes du paragraphe (1) ou donne un ordre aux termes du paragraphe (2), l'employeur affiche sans délai sur les lieux de travail une copie du programme d'équité salariale qui reflète le règlement ou l'ordre.

Affichage du
programme

(4) Des oppositions au programme d'équité salariale affiché en vertu du paragraphe (3), peuvent être déposées auprès de la Commission dans les trente jours de l'affichage, selon les modalités suivantes :

Oppositions

1. Si le programme est relié à une unité de négociation, des oppositions peuvent être déposées seulement si l'agent de révision a donné un ordre aux termes du paragraphe (2). Dans ce cas, seuls l'employeur ou l'agent négociateur de l'unité de négociation peuvent déposer une opposition.
2. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a amené, aux termes du paragraphe (1), les parties à accepter un règlement avec le consentement de l'opposant qui a déposé l'opposition aux termes du paragraphe 15 (7), seuls un employé ou le groupe d'employés visés par le programme, autre que l'opposant, peuvent déposer une opposition.
3. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a donné un ordre aux termes du paragraphe (2), l'employeur, un employé ou un groupe d'employés visés par le programme peuvent déposer une opposition.

Deemed
approval
and first
adjustments

(5) If a review officer effects a settlement of a pay equity plan for a bargaining unit under subsection (1) or, if in any other case, no objection in respect of a pay equity plan is filed with the Commission in accordance with subsection (4), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Idem

(6) Where adjustments in compensation are made after the day provided for in the pay equity plan, the employer shall make the adjustments retroactive to that date.

Hearing

17.—(1) If the Commission receives a notice of objection under subsection 16 (4), the Hearings Tribunal shall hold a hearing and, in its decision, shall settle the pay equity plan to which the objection relates.

Posting of
plan

(2) Forthwith after receiving the decision of the Hearings Tribunal, the employer shall post a copy of the decision in the work place and, on the day provided for in the plan, shall make the first adjustments in compensation required to achieve pay equity.

Idem

(3) Where adjustments in compensation are made after the day provided for in a pay equity plan, the employer shall make the adjustments retroactive to that date.

PART III

Implementation: Small Private Sector Employers

Application

18. This Part applies only to employers in the private sector who, on the effective date, employ more than nine and fewer than 100 employees.

Pay equity
plans

19. An employer to whom this Part applies may establish pay equity plans for any of the employer's establishments.

Posting of
notice

20.—(1) An employer who decides to establish a pay equity plan or plans for an establishment, as provided for in section 19, shall give notice of the decision to the bargaining agents, if any, for employees in the establishment and shall post a notice of the decision in the work place.

Application
of Part II

(2) Upon the posting of the notice referred to in subsection (1), Part II applies to the establishment to which the notice relates and this Part ceases to apply to the employer with respect to that establishment.

(5) Si un agent de révision amène les parties à accepter, aux termes du paragraphe (1), un règlement relatif à un programme d'équité salariale relié à une unité de négociation, ou que, dans tout autre cas, aucune opposition n'a été déposée auprès de la Commission au sujet d'un programme d'équité salariale aux termes du paragraphe (4), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation
réputée et
premiers
rajustements

(6) Si des rajustements de la rétribution sont effectués après la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

Idem

17 (1) Si la Commission reçoit un avis d'opposition en vertu du paragraphe 16 (4), le Tribunal tient une audience et règle, dans sa décision, le programme d'équité salariale qui fait l'objet de l'opposition.

Audience

(2) Lorsqu'il reçoit la décision du Tribunal, l'employeur en affiche sans délai une copie sur les lieux de travail. À la date prévue au programme, il effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Affichage du
programme

(3) Si des rajustements de la rétribution sont effectués après la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

Idem

PARTIE III

Mise en oeuvre : petits employeurs du secteur privé

18 La présente partie ne s'applique qu'aux employeurs du secteur privé qui, à la date d'entrée en vigueur, ont à leur service plus de neuf, mais moins de 100 employés.

Champ
d'application

19 L'employeur auquel s'applique la présente partie peut établir des programmes d'équité salariale à l'égard de chacun de ses établissements.

Programme
d'équité
salariale

20 (1) L'employeur qui décide d'établir, aux termes de l'article 19, un ou plusieurs programmes d'équité salariale à l'égard de son établissement, avise de sa décision les agents négociateurs des employés de son établissement, le cas échéant, et affiche un avis de cette décision sur les lieux de travail.

Affichage de
l'avis

(2) Dès que l'employeur affiche l'avis prévu au paragraphe (1), la partie II s'applique à l'établissement visé par l'avis et la présente partie cesse alors de s'appliquer à l'employeur à l'égard de cet établissement.

Cas d'applica-
tion de la
partie II

Transition

21.—(1) Notwithstanding subsection 7 (1) or (2), an employer to whom this Part applies may maintain compensation practices that were in existence in the employer's establishment immediately before the effective date,

- (a) until the fifth anniversary of the effective date, if the employer employs at least fifty but fewer than 100 employees on the effective date; and
- (b) until the sixth anniversary of the effective date, if the employer employs at least ten but fewer than fifty employees on the effective date,

and, until the relevant anniversary date, a compensation change that is the same in percentage terms for female job classes and male job classes in the establishment shall be deemed not to be a contravention of those subsections even though the change is different in dollar terms for a female job class than for a male job class.

Repeal

(2) This Part is repealed on the sixth anniversary of the effective date.

PART IV

Enforcement



Complaints

22.—(1) Any employer, employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

Idem

(2) Any employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining with respect to a pay equity plan that applies to the employee or group of employees that,

- (a) the plan is not being implemented according to its terms; or
- (b) because of changed circumstances in the establishment, the plan is not appropriate for the female job

21 (1) Malgré les paragraphes 7 (1) ou (2), l'employeur auquel s'applique la présente partie peut maintenir les pratiques de rétribution qui avaient cours dans son établissement immédiatement avant la date d'entrée en vigueur :

Disposition
transitoire

- a) jusqu'au cinquième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins cinquante, mais moins de 100 employés à son service à la date d'entrée en vigueur;
- b) jusqu'au sixième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins dix, mais moins de cinquante employés à son service à la date d'entrée en vigueur.

Jusqu'à l'anniversaire pertinent, la modification de la rétribution qui est la même, en termes de pourcentage, à l'égard des catégories d'emplois à prédominance féminine qu'à l'égard des catégories d'emplois à prédominance masculine dans l'établissement, est réputée ne pas contrevenir à ces paragraphes, même si, en termes absolus, la modification qui est faite à l'égard des catégories d'emplois à prédominance féminine diffère de celle qui est faite à l'égard des catégories d'emplois à prédominance masculine.

(2) La présente partie est abrogée le jour du sixième anniversaire de la date d'entrée en vigueur.

Abrogation

PARTIE IV

Exécution de la loi




22 (1) Un employeur, un employé, un groupe d'employés ou, le cas échéant, un agent négociateur qui représente l'employé ou le groupe d'employés, peuvent déposer auprès de la Commission une plainte signalant qu'il y a eu contravention à la présente loi, aux règlements ou à une ordonnance de la Commission.

Plaintes

(2) Un employé, un groupe d'employés ou, le cas échéant, l'agent négociateur qui représente l'employé ou le groupe d'employés, peuvent déposer auprès de la Commission, à l'égard du programme d'équité salariale qui vise cet employé ou ce groupe d'employés, une plainte précisant, selon le cas :


Idem


- a) que la mise en oeuvre du programme ne s'effectue pas conformément à ses modalités;
- b) qu'en raison d'un changement de la situation au sein de l'établissement, le programme ne convient pas à la catégorie d'emplois à prédominance fémi-

class to which the employee or group of employees belongs. 

Combining of complaints (3) The Hearings Tribunal may combine two or more complaints and deal with them in one proceeding if the complaints,

- (a) are made against the same person and bring into question the same or a similar issue; or
- (b) have questions of law or fact in common.

Investigation of complaints **23.**—(1) Subject to subsection (2), when the Commission receives a complaint, a review officer shall investigate the complaint and may endeavour to effect a settlement. 

Idem (2) The review officer shall notify the parties and the Hearings Tribunal as soon as he or she decides that a settlement cannot be effected and that he or she will not be making an order under subsection 24 (3). 

Decision to not deal with complaint (3) A review officer may decide that a complaint should not be considered if the review officer is of the opinion that,

- (a) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (b) the complaint is not within the jurisdiction of the Commission.

Hearing before Tribunal (4) The review officer shall notify the complainant of his or her decision under subsection (3) and the complainant may request a hearing before the Hearings Tribunal with respect to the decision.

Orders by review officers **24.**—(1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.

Idem (2) Where a review officer is of the opinion that a pay equity plan is not being implemented according to its terms, the review officer may order the employer to take such steps as are set out in the order to implement the plan.

Idem (3) Where a review officer is of the opinion that there has been a contravention of subsection 7 (1) or (2), the review officer may order the employer and the bargaining agent, if

nine à laquelle appartiennent l'employé ou le groupe d'employés. ➡

(3) Le Tribunal peut réunir deux ou plusieurs plaintes et en traiter au cours d'une même instance, si ces plaintes, selon le cas : Réunion de plaintes

- a) sont formulées contre la même personne et se rapportent au même point en litige ou à un point semblable;
- b) soulèvent les mêmes questions de droit ou de fait.

23 (1) Sous réserve du paragraphe (2), un agent de révision mène une enquête concernant la plainte reçue par la Commission et peut tenter d'amener les parties à accepter un règlement. Enquêtes au sujet des plaintes

(2) Aussitôt que l'agent de révision décide qu'il ne peut pas amener les parties à accepter un règlement et qu'il ne donnera pas d'ordre en vertu du paragraphe 24 (3), il en avise les parties et le Tribunal. Idem ➡

(3) L'agent de révision peut décider de ne pas examiner la plainte s'il est d'avis que, selon le cas : Décision de ne pas traiter de la plainte

- a) la plainte est futile, frivole, vexatoire ou faite de mauvaise foi;
- b) la plainte n'est pas du ressort de la Commission.

(4) L'agent de révision avise le plaignant de la décision qu'il a prise aux termes du paragraphe (3), et le plaignant peut demander au Tribunal de tenir une audience à l'égard de la décision. Audience devant le Tribunal

24 (1) L'agent de révision qui est d'avis qu'un programme d'équité salariale n'est pas en cours d'élaboration tel que l'exige la partie II peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesures énoncées dans son ordre en vue d'élaborer le programme. Ordres des agents de révision

(2) L'agent de révision qui est d'avis qu'un programme d'équité salariale n'est pas mis en oeuvre conformément à ses modalités peut ordonner à l'employeur de prendre les mesures énoncées dans son ordre aux fins de mettre en oeuvre le programme. Idem

(3) L'agent de révision qui est d'avis qu'il y a eu contravention aux paragraphes 7 (1) ou (2) peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesu- Idem

any, to take such steps as are set out in the order to comply with either or both of those subsections.

Idem

(4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 10.

Reference to
Tribunal

(5) Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the Hearings Tribunal.

Hearing
before
Tribunal

(6) An employer or bargaining agent named in an order under this section may request a hearing before the Hearings Tribunal with respect to the order, and, where the order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing.

Hearings

25.—(1) The Hearings Tribunal shall hold a hearing,

- (a) if a review officer is unable to effect a settlement of a complaint and has not made an order under subsection 24 (3);
- (b) if a request for a hearing, as described in subsection 23 (3) or 24 (6), is received by the Hearings Tribunal; or
- (c) if a review officer refers a matter to the Hearings Tribunal under subsection 24 (5).

Orders

(2) The Hearings Tribunal shall decide the issue that is before it for a hearing and, without restricting the generality of the foregoing, the Hearings Tribunal,

- (a) where it finds that an employer or a bargaining agent has failed to comply with Part II, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan;
- (b) where it finds that an employer has contravened subsection 9 (2) by dismissing, suspending or otherwise penalizing an employee, may order the employer to reinstate the employee, restore the employee's compensation to the same level as before the contravention and pay the employee the

res énoncées dans son ordre aux fins de se conformer à l'un ou l'autre de ces paragraphes ou aux deux.

(4) Un ordre donné aux termes du paragraphe (1) peut prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 10. Idem

(5) Si l'employeur ou l'agent négociateur ne se conforment pas à l'ordre donné aux termes du présent article, un agent de révision peut renvoyer la question au Tribunal. Renvoi devant le Tribunal

(6) Un employeur ou un agent négociateur nommés dans un ordre donné aux termes du présent article peuvent demander au Tribunal de tenir une audience à cet égard. Si l'ordre a été donné à la suite d'une plainte et que la plainte n'a pas fait l'objet d'un règlement, le plaignant peut également demander une audience. Audience devant le Tribunal


25 (1) Le Tribunal tient une audience dans les cas suivants : Audiences

- a) si l'agent de révision ne peut amener les parties à accepter un règlement relativement à la plainte et qu'il n'a pas donné d'ordre en vertu du paragraphe 24 (3);
- b) si le Tribunal reçoit une demande d'audience prévue aux paragraphes 23 (3) ou 24 (6);
- c) si l'agent de révision renvoie une question devant le Tribunal aux termes du paragraphe 24 (5).

(2) Le Tribunal règle la question dont il est saisi, et peut notamment : Ordonnances

- a) enjoindre à l'agent de révision d'élaborer un programme d'équité salariale destiné à l'établissement de l'employeur, lorsqu'il constate que ce dernier ou l'agent négociateur ne se sont pas conformés à la partie II. Il peut aussi enjoindre à l'employeur et à l'agent négociateur, le cas échéant, ou à l'un d'eux, d'acquitter la totalité des frais d'élaboration du programme;
- b) lorsqu'elle constate que l'employeur a enfreint le paragraphe 9 (2) en pénalisant un employé, notamment en le renvoyant ou en le suspendant, peut ordonner à l'employeur de réintégrer l'employé dans son emploi, de placer sa rétribution au même niveau qu'avant la contravention et de lui verser le

amount of all compensation lost because of the contravention;

- (c) where it finds that an employer has contravened subsection 9 (1) by reducing compensation, may order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction; 
- (d) may confirm, vary or revoke orders of review officers;
- (e) may, for the female job class that is the subject of the complaint or reference, order adjustments in compensation in order to achieve pay equity, where the Hearings Tribunal finds that there has been a contravention of subsection 7 (1);
- (f) may order that the pay equity plan be revised in such manner as the Hearings Tribunal considers appropriate, where it finds that the plan is not appropriate for the female job class that is the subject of the complaint or reference because there has been a change of circumstances in the establishment; and
- (g) may order a party to a proceeding to take such action or refrain from such action as in the opinion of the Hearings Tribunal is required in the circumstances.

Idem


(3) An order under clause (2) (a) may provide that a review officer may retain the services of such experts as the review officer considers necessary to prepare a pay equity plan.

Application
of Part II

(4) Part II, except section 16, applies with necessary modifications to a pay equity plan prepared under clause (2) (a) but,

- (a) the order of the Hearings Tribunal may provide for a mandatory posting date that is later than the one provided in section 10;
- (b) the order of the Hearings Tribunal shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 13 (2) (e);

montant entier de la rétribution perdue en raison de la contravention;

- c) lorsqu'il constate que l'employeur a enfreint le paragraphe 9 (1) en diminuant la rétribution, ordonner à l'employeur de rajuster la rétribution de tous les employés concernés au taux auquel ils auraient eu droit n'eût été la diminution, et de verser une rétribution égale au montant perdu en raison de la diminution; 
- d) confirmer, modifier ou révoquer les ordres des agents de révision;
- e) ordonner, à l'égard de la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi, que des rajustements de la rétribution soient effectués pour atteindre l'équité salariale, lorsqu'il constate qu'il y a eu contravention au paragraphe 7 (1);
- f) ordonner que le programme d'équité salariale soit révisé de la manière que le Tribunal estime appropriée lorsqu'il constate que le programme ne convient pas à la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi en raison d'un changement de la situation au sein de l'établissement;
- g) enjoindre à une partie à l'instance soit de prendre certaines mesures, soit de s'en abstenir, selon ce que le Tribunal juge nécessaire dans les circonstances.

(3) L'ordonnance prise en vertu de l'alinéa (2) a) peut permettre à l'agent de révision de retenir les services des experts que celui-ci estime nécessaires en vue d'élaborer un programme d'équité salariale. Idem

(4) À l'exception de l'article 16, la partie II s'applique avec les adaptations nécessaires au programme d'équité salariale élaboré en vertu de l'alinéa (2) a). Toutefois : Cas d'application de la partie II

- a) l'ordonnance prise par le Tribunal peut prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 10;
- b) l'ordonnance du Tribunal ne prévoit pas une date de rajustement de la rétribution différente de la date pertinente énoncée à l'alinéa 13 (2) e);

- (c) the review officer shall perform the duties of the employer and the bargaining agent, if any;
- (d) when the review officer posts the plan in the work place as subsection 14 (4) or 15 (6) provides, the employer, the bargaining agent (if the plan relates to a bargaining unit), or any employee or group of employees to whom the plan applies (if the plan does not relate to a bargaining unit) may file an objection with the Hearings Tribunal; and
- (e) an objection under clause (d) shall be dealt with by the Hearings Tribunal under section 17.

Retroactive
compensation
adjustments

(5) An order under clause (2) (e) may be retroactive to the day of the contravention of subsection 7 (1).

Idem

(6) An order under clause (2) (f) may provide that adjustments in compensation resulting from the revision of the pay equity plan be made retroactive to the day of the change in circumstances that gave rise to the order.



Offences and
penalties

26.—(1) Every person who contravenes or fails to comply with subsection 9 (2) or subsection 36 (5) or an order of the Hearings Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, in the case of an individual, and not more than \$25,000, in any other case.

Parties

(2) If a corporation or bargaining agent contravenes or fails to comply with subsection 9 (2) or subsection 36 (5) or an order of the Hearings Tribunal, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted.



Prosecution
against
bargaining
agent
Consent

(3) A prosecution for an offence under this Act may be instituted against a bargaining agent in its own name.

(4) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Hearings Tribunal.

- c) l'agent de révision exerce les fonctions de l'employeur et de l'agent négociateur, le cas échéant;
- d) lorsque l'agent de révision affiche le programme sur les lieux de travail comme le prévoient les paragraphes 14 (4) ou 15 (6), l'employeur, l'agent négociateur (si le programme est relié à une unité de négociation) ou un employé ou un groupe d'employés visés par le programme (si le programme n'est pas relié à une unité de négociation) peuvent déposer une opposition auprès du Tribunal;
- e) le Tribunal traite de l'opposition visée à l'alinéa d) aux termes de l'article 17.

(5) L'ordonnance prise aux termes de l'alinéa (2) e) peut avoir un effet rétroactif au jour de la contravention au paragraphe 7 (1). Rajustements rétroactifs de la rétribution

(6) L'ordonnance prise aux termes de l'alinéa (2) f) peut prévoir que les rajustements de la rétribution résultant de la révision du programme d'équité salariale ont un effet rétroactif au jour où s'est produit le changement de situation qui a donné lieu à l'ordonnance. Idem

26 (1) Quiconque contrevient aux paragraphes 9 (2) ou 36 (5) ou à une ordonnance du Tribunal ou ne s'y conforme pas, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 \$ dans le cas d'une personne physique, et d'au plus 25 000 \$ dans les autres cas. Infractions et peines

(2) Si une personne morale ou un agent négociateur contreviennent aux paragraphes 9 (2) ou 36 (5) ou à une ordonnance du Tribunal ou ne s'y conforment pas, le dirigeant, l'employé ou le mandataire qui autorise ou permet la contravention ou y donne son consentement est partie à l'infraction, en est coupable et, sur déclaration de culpabilité, est passible de la peine prévue pour cette infraction, que la personne morale ou l'agent négociateur aient été ou non poursuivis ou déclarés coupables de l'infraction. Parties

(3) Une poursuite relative à une infraction à la présente loi peut être intentée contre l'agent négociateur en tant que tel. Poursuite contre l'agent négociateur

(4) Il ne peut être intenté aucune poursuite relative à une infraction à la présente loi sans le consentement écrit du Tribunal. Consentement

PART V

Administration

Commission
established

27.—(1) There is hereby established a commission to be known as the Pay Equity Commission of Ontario.

Idem

(2) The Commission shall consist of the Pay Equity Hearings Tribunal and the Pay Equity Office.

Staff

(3) Such employees as are necessary for the proper conduct of the Commission's work may be appointed under the *Public Service Act* to serve in the Pay Equity Office.

R.S.O. 1980,
c. 418

Services of
ministries,
etc.

(4) The Commission shall, if appropriate, use the services and facilities of a ministry, board, commission or agency of the Government of Ontario.

Hearings
Tribunal

28.—(1) The Hearings Tribunal shall be composed of a presiding officer, one or more deputy presiding officers and as many other members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

Alternate
presiding
officer

(2) The Lieutenant Governor in Council shall designate one of the deputy presiding officers to be alternate presiding officer and the person so designated, in the absence of the presiding officer or if the presiding officer is unable to act, shall have all of the powers of the presiding officer.

Remuneration
and expenses

(3) The members of the Hearings Tribunal who are not Crown employees shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

Resignation
of member

(4) Where a member of the Hearings Tribunal resigns, he or she may carry out and complete any duties or responsibilities and exercise any powers that he or she would have had if he or she had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he or she participated as a member of the Hearings Tribunal.

Powers and
duties of
Tribunal

29.—(1) The Hearings Tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by this Act or the regulations.

PARTIE V

Application de la loi

27 (1) Est créée une commission nommée Commission de l'équité salariale de l'Ontario.

Création de la Commission

(2) La Commission se compose du Tribunal de l'équité salariale et du Bureau de l'équité salariale.

Idem

(3) Les employés nécessaires à la conduite efficace des activités de la Commission peuvent être nommés aux termes de la *Loi sur la fonction publique* afin de travailler au Bureau de l'équité salariale.

Personnel

L.R.O. 1980, chap. 418

(4) La Commission se prévaut, si cela est approprié, des services et installations des ministères, commissions ou organismes du gouvernement de l'Ontario.

Services des ministères, etc.

28 (1) Le Tribunal se compose d'un président, d'un ou de plusieurs vice-présidents, et du nombre d'autres membres répartis en un nombre égal de représentants des employeurs et des employés que le lieutenant-gouverneur en conseil juge approprié. Toutes ces personnes sont nommées par le lieutenant-gouverneur en conseil.

Tribunal

(2) Le lieutenant-gouverneur en conseil désigne l'un des vice-présidents comme président suppléant. Cette personne possède tous les pouvoirs du président si ce dernier est absent ou empêché d'agir.

Président suppléant

(3) Les membres du Tribunal qui ne sont pas des employés de la Couronne reçoivent la rémunération que peut fixer le lieutenant-gouverneur en conseil, et, sous réserve de l'approbation du Conseil de gestion du gouvernement, les frais normaux engagés lors de l'exercice de leurs fonctions aux termes de la présente loi.

Rémunération et frais

(4) Le membre du Tribunal qui démissionne peut toutefois exercer les attributions qu'il aurait continué d'avoir s'il n'avait pas démissionné, en ce qui concerne toute question faisant l'objet d'une instance à laquelle il a participé en tant que membre.

Démission d'un membre

29 (1) Le Tribunal peut exercer les pouvoirs et doit accomplir les obligations qui lui sont conférés par la présente loi ou par les règlements.

Attributions du Tribunal

Idem

(2) Without limiting the generality of subsection (1), the Hearings Tribunal,



- (a) may decide in an order made under subsection 17 (1) or clause 25 (2) (a) that any job class is a female job class or a male job class;
- (b) may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it; and
- (c) may require that any person seeking a determination of any matter by the Hearings Tribunal shall give written notice, in such form and manner as the Hearings Tribunal specifies, to the persons that the Hearings Tribunal specifies.



Panels

(3) The presiding officer may establish panels of the Hearings Tribunal and it may sit in two or more panels simultaneously so long as a quorum of the Hearings Tribunal is present on each panel.

Quorum

(4) The presiding officer or a deputy presiding officer, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Hearings Tribunal.

Decisions

(5) The decision of the majority of the members of the Hearings Tribunal present and constituting a quorum is the decision of the Hearings Tribunal, but, if there is no majority, the decision of the presiding officer or deputy presiding officer governs.

Exclusive jurisdiction

30.—(1) The Hearings Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Hearings Tribunal thereon is final and conclusive for all purposes.

Reconsideration of decisions, etc.

(2) The Hearings Tribunal may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order.



Testimony in civil proceedings

31. Except with the consent of the Hearings Tribunal, no member of the Hearings Tribunal, employee of the Commission or person whose services have been contracted for by the Commission shall be required to testify in any civil proceeding, in any proceeding before the Hearings Tribunal or in any proceeding before any other tribunal respecting information

(2) Le Tribunal possède notamment les attributions suivantes : Idem

- a) il peut décider, au moyen d'une ordonnance prise aux termes du paragraphe 17 (1) ou de l'alinéa 25 (2) a), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;
- b) il peut établir des règles concernant la conduite et la gestion de ses affaires, ainsi que des règles de pratique et de procédure à suivre relativement aux questions dont il est saisi;
- c) il peut exiger que la personne qui lui demande de prendre une décision relative à une question quelconque en avise par écrit, de la manière que précise le Tribunal, les personnes qu'il précise.

(3) Le président peut former des comités du Tribunal, qui peut ainsi siéger simultanément en plusieurs comités, pourvu que le quorum du Tribunal soit atteint dans chacun d'eux. Comités


(4) Le président ou un vice-président, un membre représentant les employeurs et un membre représentant les employés constituent le quorum et peuvent exercer tous les pouvoirs du Tribunal. Quorum

(5) La décision de la majorité des membres du Tribunal présents qui constituent le quorum est la décision du Tribunal. En cas de partage, le président ou le vice-président a voix prépondérante. Décisions

30 (1) Le Tribunal a compétence exclusive pour exercer les pouvoirs que lui confère la présente loi et trancher les questions de fait ou de droit soulevées à l'occasion d'une question dont il est saisi. Ses décisions et les mesures qu'il prend sont définitives et ont à toutes fins force de chose jugée. Compétence exclusive

(2) Le Tribunal peut, chaque fois qu'il le juge à propos, examiner de nouveau, modifier ou annuler ses propres décisions et ordonnances. Nouvel examen des décisions et ordonnances

31 Sauf si le Tribunal y consent, ses membres, les employés de la Commission et les personnes dont elle a retenu les services par contrat ne peuvent pas être contraints à témoigner lors d'une instance civile ou devant le Tribunal ou tout autre tribunal administratif, en ce qui concerne les rensei- Témoignages lors d'instances civiles

obtained in the discharge of their duties or while acting within the scope of their employment under this Act. 

Annual
report

32. The Commission shall make an annual report of its activities and affairs to the Minister not later than the 30th day of June in each year and the Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Parties to
proceedings

33.—(1) Where a hearing is held before the Hearings Tribunal or where a review officer investigates for the purposes of effecting a settlement of an objection or complaint, the parties to the proceeding are,

- (a) the employer;
- (b) the objector or complainant; and
- (c) the bargaining agent (if the pay equity plan relates to a bargaining unit) or the employees to whom the plan relates (if the plan does not relate to a bargaining unit).

Notice

(2) Where the Hearings Tribunal or a review officer requires that a notice be given by the employer to employees, the employer shall post the notice in the work place and such notice shall be deemed to have been sufficiently given to all employees in the work place when it is so posted.

Represent-
ation

(3) An employee or a group of employees may appoint any person or organization to act as the agent of the employee or group of employees before the Hearings Tribunal or before a review officer.

Idem

(4) Where an employee or group of employees advises the Hearings Tribunal in writing that the employee or group of employees wishes to remain anonymous, the agent of the employee or group of employees shall be the party to the proceeding before the Hearings Tribunal or review officer and not the employee or group of employees.

Idem

(5) Where subsection (4) applies, the agent, in the agent's name, may take all actions that an employee may take under this Act including the filing of objections under Part II and the filing of complaints under Part IV.

Pay Equity
Office

34.—(1) The Pay Equity Office is responsible for the enforcement of this Act and orders of the Hearings Tribunal.

gnements obtenus dans l'accomplissement de leurs devoirs ou dans le cadre de leurs fonctions aux termes de la présente loi.

32 La Commission présente au ministre, au plus tard le 30 juin de chaque année, un rapport annuel sur ses activités et ses affaires. Le ministre le dépose devant l'Assemblée si elle siège, sinon il le fait à la session suivante.

Rapport
annuel

33 (1) Lorsque le Tribunal tient une audience ou qu'un agent de révision mène une enquête en vue d'amener les parties à accepter un règlement relativement à une opposition ou à une plainte, les parties à l'instance sont les suivantes :

Parties à
l'instance

- a) l'employeur;
- b) l'opposant ou le plaignant;
- c) l'agent négociateur (si le programme d'équité salariale est relié à une unité de négociation) ou les employés visés par le programme (si celui-ci n'est pas relié à une unité de négociation).

(2) Lorsque le Tribunal ou l'agent de révision exige que l'employeur donne un avis à ses employés, celui-ci affiche l'avis sur les lieux de travail, et l'avis ainsi affiché est réputé suffisant à l'égard de tous les employés du lieu de travail.

Avis

(3) Un employé ou un groupe d'employés peuvent désigner une personne ou une organisation comme leur mandataire devant le Tribunal ou l'agent de révision.

Représenta-
tion

(4) Lorsqu'un employé ou un groupe d'employés avisent par écrit le Tribunal de leur désir de garder l'anonymat, leur mandataire devient à leur place la partie à l'instance devant le Tribunal ou l'agent de révision.

Idem

(5) Lorsque le paragraphe (4) s'applique, le mandataire peut, en son nom, prendre toutes les mesures qu'un employé peut prendre aux termes de la présente loi. Il peut notamment déposer une opposition en vertu de la partie II et déposer une plainte en vertu de la partie IV.

Idem

34 (1) Le Bureau de l'équité salariale est chargé de l'exécution de la présente loi et des ordonnances du Tribunal.

Bureau de
l'équité
salariale

Idem

(2) Without limiting the generality of subsection (1), the Pay Equity Office,

- (a) may conduct research and produce papers concerning any aspect of pay equity and related subjects and make recommendations to the Minister in connection therewith;
- (b) may conduct public education programs and provide information concerning any aspect of pay equity and related subjects;
- (c) shall provide support services to the Hearings Tribunal;
- (d) shall conduct such studies as the Minister requires and make reports and recommendations in relation thereto; and
- (e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been predominantly female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the Minister in relation to redressing such discrimination.

Chief
adminis-
trative
officer

(3) The Lieutenant Governor in Council shall appoint a person to be the head of the Pay Equity Office and that person shall be the chief administrative officer of the Commission.

Minister
may require
studies, etc.

(4) The Minister may require the Pay Equity Office to conduct such studies related to pay equity as are set out in a request to the head of the Office and to make reports and recommendations in relation thereto.

Annual
report

(5) Not later than the 31st day of March in each year, the head of the Pay Equity Office shall make an annual report to the Minister on the activities and affairs of the Commission and the Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

(2) Le Bureau de l'équité salariale possède notamment les attributions suivantes :

Idem

- a) il peut effectuer des recherches et préparer des rapports concernant n'importe quel aspect de l'équité salariale et des questions connexes et peut également formuler des recommandations au ministre en ce qui concerne l'objet de ces recherches ou rapports;
- b) il peut instituer à l'intention du public des programmes d'information concernant n'importe quel aspect de l'équité salariale et des questions connexes;
- c) il fournit des services d'appoint au Tribunal;
- d) il mène les études qu'exige le ministre et prépare des rapports et formule des recommandations en ce qui concerne l'objet de ces études;
- e) il mène une étude au sujet de la discrimination systémique entre les sexes en ce qui concerne la rétribution du travail effectué, dans les secteurs de l'économie où la main-d'oeuvre est traditionnellement à prédominance féminine, par des catégories d'emplois à prédominance féminine dans les établissements qui n'ont pas de catégories d'emplois à prédominance masculine appropriées aux fins d'établir la comparaison visée à l'article 5; dans l'année qui suit la date d'entrée en vigueur, il prépare des rapports et formule des recommandations à l'intention du ministre en vue d'éliminer cette discrimination.

(3) Le lieutenant-gouverneur en conseil nomme une personne à la direction du Bureau de l'équité salariale. Cette personne est le responsable de l'administration de la Commission.

Responsable
de l'adminis-
tration

(4) Le ministre peut exiger que le Bureau de l'équité salariale mène les études liées à l'équité salariale que précise une demande qu'il adresse au dirigeant du Bureau. Il peut également exiger que le Bureau prépare des rapports et formule des recommandations en ce qui concerne l'objet de ces études.

Études exi-
gées par le
ministre


(5) Le dirigeant du Bureau de l'équité salariale présente au ministre, au plus tard le 31 mars de chaque année, un rapport annuel sur les activités et affaires de la Commission. Le ministre le dépose devant l'Assemblée si elle siège, sinon il le fait à la session suivante.

Rapport
annuel

Review
officers,
designation

35.—(1) The head of the Pay Equity Office shall designate one or more employees of the Office to be review officers.

Review
officers,
duties


(2) Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal. 

Powers

(3) A review officer, for the purpose of carrying out his or her duties,

- (a) may enter any place at any reasonable time;
- (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;
- (d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and
- (e) may provide in an order made under subsection 16 (2) or 24 (1) that any job class is a female job class or a male job class.

Non-
application
of
R.S.O. 1980,
c. 484

(4) The *Statutory Powers Procedure Act* does not apply to a review officer and he or she is not required to hold a hearing before making an order authorized by this Act. 

Entry to
dwellings

36.—(1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

35 (1) Le dirigeant du Bureau de l'équité salariale désigne un ou plusieurs employés du Bureau comme agents de révision.

Désignation
des agents
de révision

(2) Il incombe aux agents de révision de contrôler l'élaboration et la mise en oeuvre des programmes d'équité salariale et de mener des enquêtes au sujet des oppositions et des plaintes qui ont été déposées auprès de la Commission. Ils peuvent tenter d'amener les parties à accepter un règlement. Il leur incombe de prendre toute autre mesure prévue par la présente loi ou par une ordonnance du Tribunal.

Fonctions
des agents
de révision

(3) Dans l'exercice de ses fonctions, l'agent de révision peut :

Pouvoirs

- a) à une heure raisonnable, pénétrer dans un endroit quelconque;
- b) exiger la production, à des fins d'inspection, de documents ou d'objets qui peuvent être reliés à l'exercice de ses fonctions;
- c) après avoir donné un récépissé à cet effet, enlever de quelque endroit où ils se trouvent, les documents ou les objets produits à la suite de la demande formulée en vertu de l'alinéa b), aux fins d'en tirer des copies ou des extraits, après quoi ils sont promptement retournés à la personne qui les a produits;
- d) interroger quiconque sur des questions qui sont ou peuvent être reliées à l'exercice de ses fonctions, sous réserve du droit de cette personne à la présence d'un avocat ou d'un autre représentant lors de l'interrogatoire;
- e) stipuler, dans un ordre donné aux termes des paragraphes 16 (2) ou 24 (1), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(4) La *Loi sur l'exercice des compétences légales* ne s'applique pas à un agent de révision, et celui-ci n'est pas obligé de tenir une audience avant de donner un ordre autorisé par la présente loi.

Non-
application
du chap. 484
des L.R.O.
de 1980

36 (1) Le pouvoir accordé par la présente loi de pénétrer dans un endroit qui sert de logement, ne peut être exercé sans la permission de l'occupant, sauf en vertu d'un mandat délivré aux termes du présent article.

Accès à un
logement

Warrant for
search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of a review officer's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the review officer named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for
entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a review officer may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the review officer named in the warrant.

Execution
and
expiry of
warrant

(4) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(5) No person shall hinder, obstruct or interfere with a review officer in the execution of a warrant or otherwise impede a review officer in carrying out his or her duties under this Act.

Idem

(6) Subsection (5) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (2).

Admissibility
of copies

(7) Copies of, or extracts from, documents and things removed from premises under this Act and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

(2) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il se trouve dans un endroit quelconque des documents ou des objets qu'on peut raisonnablement croire susceptibles de fournir des preuves à l'agent de révision dans l'exercice de ses fonctions aux termes de la présente loi, peut délivrer un mandat de perquisition rédigé selon la formule prescrite. Le mandat autorise l'agent de révision qui y est nommé à perquisitionner à cet endroit en vue d'en enlever les pièces précitées pour en tirer des copies ou des extraits, après quoi elles sont promptement retournées à cet endroit.

Mandat de perquisition

(3) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il existe des motifs raisonnables de croire qu'il est nécessaire qu'un agent de révision, dans l'exercice de ses fonctions en vertu de la présente loi, pénètre dans un endroit qui sert de logement ou dont l'accès a été refusé, peut délivrer un mandat rédigé selon la formule prescrite, autorisant l'agent de révision qui y est nommé à pénétrer dans cet endroit.

Mandat pour pénétrer dans un endroit

(4) Le mandat délivré aux termes du présent article :

Exécution et caducité du mandat

- a) précise les jours et les heures pendant lesquels il peut être exécuté;
- b) porte une date de caducité qui ne peut être postérieure à quinze jours de sa délivrance.

(5) Nul ne doit entraver ni gêner un agent de révision dans l'exécution d'un mandat ni d'une autre façon l'empêcher d'exercer ses fonctions aux termes de la présente loi.

Interdiction d'entraver

(6) Sauf si un mandat a été délivré aux termes du paragraphe (2), le paragraphe (5) n'est pas enfreint par le refus d'une personne de produire des documents ou des objets.

Idem

(7) Les copies ou extraits qu'une personne a tirés des documents et des objets qui ont été enlevés d'un endroit aux termes de la présente loi et que cette personne certifie être conformes aux originaux, sont admissibles en preuve dans la même mesure et ont la même valeur probante que les documents ou les objets dont ils sont tirés.

Admissibilité des copies

PART VI

Regulations and Miscellaneous

Regulations

37. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and notices and providing for their use;
- (b) prescribing methods for determining the historical incumbency of a job class;
- (c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class;
- (d) prescribing the method of valuing any form of compensation;
- (e) prescribing criteria that shall be taken into account in determining whether work performed in two job classes is of equal or comparable value;
- (f) prescribing criteria that shall be taken into account in deciding whether or not a difference in compensation between a female job class and a male job class is a difference that is permitted by subsection 8 (1) or (2);
- (g) permitting the Hearings Tribunal, on the application of an employer and in accordance with such criteria as may be prescribed in the regulations, to change the mandatory posting date and the dates for adjustments in compensation to dates later than those set out in Part II and to vary the minimum adjustments in compensation required by that Part, subject to such conditions as the Hearings Tribunal may impose in its order granting the application;
- (h) adding to the Appendix to the Schedule any person or class of persons or any agency, authority, board, commission, corporation or organization of any kind and providing that the mandatory posting date

PARTIE VI

Règlements et dispositions diverses

37 Le lieutenant-gouverneur en conseil peut, par règle- Règlements
ment :

- a) prescrire des formules et des avis, et prévoir les modalités de leur emploi;
- b) prescrire les méthodes à utiliser pour déterminer le sexe des personnes qui occupent traditionnellement les postes d'une catégorie d'emplois;
- c) prescrire des critères dont il est tenu compte aux fins de déterminer si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;
- d) prescrire la méthode à utiliser pour déterminer la valeur de toute forme de rétribution;
- e) prescrire des critères dont il est tenu compte aux fins de déterminer si le travail effectué dans deux catégories d'emplois est de valeur égale ou comparable;
- f) prescrire des critères dont il est tenu compte aux fins de déterminer si un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine est un écart permis par les paragraphes 8 (1) ou (2);
- g) permettre au Tribunal, à la demande d'un employeur et conformément aux critères qui peuvent être prescrits dans les règlements, de reporter la date d'affichage obligatoire et les dates des rajustements de la rétribution à des dates postérieures à celles que prévoit la partie II, ainsi que de modifier les rajustements minimaux de la rétribution exigés par cette partie, aux conditions que le Tribunal peut imposer dans l'ordonnance par laquelle il consent à la demande;
- h) ajouter à l'appendice de l'annexe une personne, une catégorie de personnes ou un organisme, un office, un conseil, une commission, une personne morale ou une organisation quelconque, et prévoir que la

for an entity so added shall be such date as is set out in the regulations.

Review of
Act

38.—(1) Seven years after the effective date, the Lieutenant Governor in Council shall appoint a person who shall undertake a comprehensive review of this Act and its operation.

Report to
Minister

(2) The person appointed under subsection (1) shall prepare a report on his or her findings and shall submit the report to the Minister.

Idem

(3) The Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Moneys

39. The moneys required for the purposes of this Act by the Crown in right of Ontario shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

Crown bound

40. This Act binds the Crown in right of Ontario.

Commence-
ment

41. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

42. The short title of this Act is the *Pay Equity Act, 1987*.

SCHEDULE

1. The public sector in Ontario consists of,

R.S.O. 1980,
c. 303

- (a) the Crown in right of Ontario, every agency thereof, and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
- (b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;

R.S.O. 1980,
c. 129

- (c) every board as defined in the *Education Act*, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;

R.S.O. 1980,
cc. 410, 389,
79, 391

- (d) every hospital listed in the Schedule to Regulation 863 of Revised Regulations of Ontario, 1980 made under the *Public Hospitals Act*, every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*, every hospital established or

date d'affichage obligatoire de ces derniers est celle qui figure aux règlements.

38 (1) Sept ans après la date d'entrée en vigueur, le lieutenant-gouverneur en conseil nomme une personne qui procède à l'examen global de la présente loi et des modalités de son application. Examen de la loi

(2) La personne nommée aux termes du paragraphe (1) rédige un rapport qui énonce ses conclusions et le présente au ministre. Rapport au ministre

(3) Le ministre dépose le rapport devant l'Assemblée si elle siège, sinon il le fait à la session suivante. Idem

39 Les sommes d'argent nécessaires à la Couronne du chef de l'Ontario pour l'application de la présente loi sont prélevées, jusqu'au 31 mars 1988, sur le Fonds du revenu consolidé. Après cette date, ces sommes sont prélevées sur les sommes affectées à cette fin par la Législature. Sommes d'argent

40 La présente loi lie la Couronne du chef de l'Ontario. La Couronne est liée

41 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation. Entrée en vigueur

42 Le titre abrégé de la présente loi est *Loi de 1987 sur l'équité salariale*. Titre abrégé

ANNEXE

1 Le secteur public en Ontario se compose des éléments suivants :

- a) la Couronne du chef de l'Ontario, les organismes qui en relèvent, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont la majorité des administrateurs, des membres ou des dirigeants sont nommés ou choisis par le lieutenant-gouverneur en conseil ou par un membre du Conseil des ministres ou avec leur approbation;
- b) les municipalités de l'Ontario, les conseils locaux au sens de la *Loi sur les affaires municipales*, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont les membres ou les dirigeants sont nommés ou choisis par le conseil d'une municipalité de l'Ontario ou avec leur approbation; L.R.O. 1980, chap. 303
- c) les conseils au sens de la *Loi sur l'éducation*, ainsi que les collèges, les universités et les établissements d'enseignement postsecondaire de l'Ontario qui reçoivent la majeure partie de leur capital ou de leurs fonds annuels de fonctionnement de la Couronne; L.R.O. 1980, chap. 129
- d) les hôpitaux dont le nom figure à l'annexe du Règlement 863 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur les hôpitaux publics*, les hôpitaux privés exploités aux termes d'un permis délivré en vertu de la *Loi sur les hôpitaux privés*, les hôpitaux établis ou agréés par le lieutenant-gouverneur en conseil à L.R.O. 1980, chap. 410, 389, 79, 391

approved by the Lieutenant Governor in Council as a community psychiatric hospital under the *Community Psychiatric Hospitals Act* and every sanitarium licensed by the Lieutenant Governor in Council under the *Private Sanitaria Act*;

- (e) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

1983, c. 10

- (g) every board of health under the *Health Promotion and Protection Act, 1983*, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;
- (h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Provincial Auditor; and
- (i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

2. For the purposes of this Schedule, "municipality" includes a metropolitan, regional or district municipality and the County of Oxford.

APPENDIX

MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation.

MINISTRY OF CITIZENSHIP AND CULTURE

1. The Art Gallery of Ontario.
2. CJRT-FM Inc.
3. Royal Botanical Gardens.

MINISTRY OF COLLEGES AND UNIVERSITIES

1. Algoma College.
2. Assumption University.
3. Brescia College.
4. Canterbury College.

titre d'hôpitaux psychiatriques communautaires en vertu de la *Loi sur les hôpitaux psychiatriques communautaires*, ainsi que les maisons de santé titulaires d'un permis délivré par le lieutenant-gouverneur en conseil en vertu de la *Loi sur les maisons de santé*;

- e) les personnes morales disposant d'un capital-actions dont au moins 90 pour cent des actions émises sont détenues à titre bénéficiaire par un ou plusieurs employeurs visés aux alinéas a) à d) ou pour le compte de ceux-ci, ainsi que les filiales en propriété exclusive de ces personnes morales;
- f) les personnes morales sans capital-actions dont la majorité des membres ou des dirigeants sont nommés ou choisis par un ou plusieurs des employeurs visés aux alinéas a) à d) ou avec leur approbation, ou en sont membres, ainsi que les filiales en propriété exclusive de ces personnes morales;
- g) les conseils de santé aux termes de la *Loi de 1983 sur la protection et la promotion de la santé*, ainsi que les conseils de santé aux termes d'une loi de la Législature qui crée ou maintient une municipalité régionale; 1983, chap. 10
- h) le Bureau du lieutenant-gouverneur de l'Ontario et celui de l'Assemblée, les membres de l'Assemblée, le Bureau de l'ombudsman et celui du vérificateur provincial;
- i) les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes et les catégories de ceux-ci qui figurent dans l'appendice à la présente annexe ou qui sont ajoutés à l'appendice au moyen de règlements pris en application de la présente loi.

2 Pour l'application de la présente annexe, le terme «municipalité» s'entend en outre d'une municipalité régionale, de district ou de communauté urbaine, ainsi que du comté d'Oxford.

APPENDICE

MINISTÈRE DE L'AGRICULTURE ET DE L'ALIMENTATION

1. Ontario Dairy Herd Improvement Corporation.

MINISTÈRE DES AFFAIRES CIVIQUES ET CULTURELLES

1. Musée des beaux-arts de l'Ontario.
2. CJRT-FM Inc.
3. Royal Botanical Gardens.

MINISTÈRE DES COLLÈGES ET UNIVERSITÉS

1. Algoma College.
2. Assumption University.
3. Brescia College.
4. Canterbury College.

5. Collège dominicain de philosophie et de théologie.
6. Concordia Lutheran Seminary.
7. Conrad Grebel College.
8. Hearst College.
9. Holy Redeemer College.
10. Huntington University.
11. Huron College.
12. Iona College.
13. King's College.
14. Knox College.
15. L'Université de Sudbury.
16. McMaster Divinity College.
17. Nipissing College.
18. Queen's Theological College.
19. Regis College.
20. Renison College.
21. St. Augustine's Seminary.
22. St. Paul's United College.
23. St. Paul University.
24. St. Peter's Seminary.
25. The University of St. Jerome's College.
26. The University of St. Michael's College.
27. Thorneloe University.
28. Trinity College.
29. Victoria University.
30. Waterloo Lutheran Seminary.
31. Wycliffe College.



MINISTRY OF COMMUNITY AND SOCIAL SERVICES

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) children's residences operating under the *Child and Family Services Act, 1984* (c. 55);

5. Collège dominicain de philosophie et de théologie.
6. Concordia Lutheran Seminary.
7. Conrad Grebel College.
8. Collège de Hearst.
9. Holy Redeemer College.
10. Huntington University.
11. Huron College.
12. Iona College.
13. King's College.
14. Knox College.
15. L'Université de Sudbury.
16. McMaster Divinity College.
17. Nipissing College.
18. Queen's Theological College.
19. Regis College.
20. Renison College.
21. St. Augustine's Seminary.
22. St. Paul's United College.
23. Université Saint-Paul.
24. St. Peter's Seminary.
25. The University of St. Jerome's College.
26. The University of St. Michael's College.
27. Thorneloe University.
28. Trinity College.
29. Victoria University.
30. Waterloo Lutheran Seminary.
31. Wycliffe College.






MINISTÈRE DES SERVICES SOCIAUX ET COMMUNAUTAIRES




1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) les foyers pour enfants qui fonctionnent en vertu de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55);




- (b) homes for the aged operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203);
 - (c) counselling services and staff training purchased by municipalities under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188); 
 - (d) counselling services purchased by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (e) hostels providing services purchased by municipalities under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188);
 - (f) work activity projects under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188) purchased by municipalities or the Ministry of Community and Social Services;
 - (g) support services to the physically handicapped purchased by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (h) vocational rehabilitation services funded by the Ministry of Community and Social Services under the *Vocational Rehabilitation Services Act* (R.S.O. 1980, c. 525);
 - (i) satellite homes operating or funded under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203);
 - (j) nursing services purchased or funded under the *Homemakers and Nurses Services Act* (R.S.O. 1980, c. 200);
 - (k) workshops under the *Vocational Rehabilitation Services Act* (R.S.O. 1980, c. 525);
 - (l) services funded under the *Developmental Services Act* (R.S.O. 1980, c. 118);
- 
- (m) homes for retarded persons and auxiliary residences under the *Homes for Retarded Persons Act* (R.S.O. 1980, c. 201); 
 - (n) day nurseries operated by corporations or municipalities under the *Day Nurseries Act* (R.S.O. 1980, c. 111) receiving direct subsidies from the Ministry of Community and Social Services;
 - (o) day nurseries and private home day-care agencies providing services and funded under agreements with municipalities under the *Day Nurseries Act* (R.S.O. 1980, c. 111);
 - (p) credit counselling services receiving financial assistance under agreements with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);



- b) les foyers pour personnes âgées qui fonctionnent en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203);
- c) les services de consultation et de formation du personnel qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188); 
- d) les services de consultation qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- e) les centres d'accueil qui fournissent des services qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188);
- f) des programmes d'adaptation au travail en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188) qui sont achetés par des municipalités ou par le ministère des Services sociaux et communautaires;
- g) des services d'appoint pour les personnes atteintes d'un handicap physique qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- h) des services de réadaptation professionnelle financés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- i) des foyers annexes qui fonctionnent ou qui sont financés en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203);
- j) des services de soins infirmiers qui sont achetés ou financés en vertu de la *Loi sur les services d'aides familiales et d'infirmières visiteuses* (L.R.O. 1980, chap. 200);
- k) des ateliers établis en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- l) des services financés en vertu de la *Loi sur les services aux déficients mentaux* (L.R.O. 1980, chap. 118); 
- m) des foyers pour déficients mentaux et des établissements auxiliaires aux termes de la *Loi sur les foyers pour déficients mentaux* (L.R.O. 1980, chap. 201); 
- n) des garderies dont le fonctionnement est assuré par des personnes morales ou des municipalités en vertu de la *Loi sur les garderies* (L.R.O. 1980, chap. 111) qui reçoivent des subventions directes du ministère des Services sociaux et communautaires;
- o) des garderies et des sociétés de garde d'enfants en maisons privées qui fournissent des services et qui sont financées aux termes d'ententes conclues avec des municipalités en vertu de la *Loi sur les garderies* (L.R.O. 1980, chap. 111);
- p) des services de consultation en matière de crédit qui reçoivent une aide financière aux termes d'ententes conclues avec le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);



(q) young offenders services funded under Part IV of the *Child and Family Services Act, 1984* (c. 55) or under an agreement with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);

(r) services to children funded or purchased by the Ministry of Community and Social Services under the *Child and Family Services Act, 1984* (c. 55). 

2. Societies within the meaning of the *Child and Family Services Act, 1984* (c. 55) and agencies from whom such societies purchase child care services.

3. Corporations operating charitable institutions approved under the *Charitable Institutions Act* (R.S.O. 1980, c. 64).

4. Boards of management operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203).

5. District Welfare Administration Boards operating under the *District Welfare Administration Boards Act* (R.S.O. 1980, c. 122).

MINISTRY OF CORRECTIONAL SERVICES

1. Any agency, board, commission, person or partnership that provides, under funding by the Ministry of Correctional Services,

- (a) assistance to witnesses, victims of crime or disabled persons;
- (b) educational, employment search, medical or promotional services;
- (c) supervision of inmates, parolees, probationers or persons accused of crime;
- (d) community residential services.

MINISTRY OF EDUCATION


- 1. Centre franco-ontarien de ressources pédagogiques.

MINISTRY OF HEALTH

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) an ambulance service, under the authority of a licence issued under the *Ambulance Act* (R.S.O. 1980, c. 20);
- (b) a nursing home, under the authority of a licence issued under the *Nursing Homes Act* (R.S.O. 1980, c. 320);



- q) des services aux jeunes contrevenants qui sont financés aux termes de la partie IV de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ou aux termes d'une entente conclue avec le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- r) des services aux enfants qui sont financés ou achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55). 

2 Les sociétés au sens de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ainsi que les agences auprès desquelles ces sociétés achètent des services de soins aux enfants.

3 Les personnes morales qui assurent le fonctionnement d'établissements de bienfaisance agréés en vertu de la *Loi sur les établissements de bienfaisance* (L.R.O. 1980, chap. 64).

4 Les conseils de gestion qui fonctionnent en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203).

5 Les commissions de district pour l'administration de l'aide sociale fonctionnant en vertu de la *Loi sur les commissions de district pour l'administration de l'aide sociale* (L.R.O. 1980, chap. 122).

MINISTÈRE DES SERVICES CORRECTIONNELS

1 Les organismes, conseils, commissions, personnes ou sociétés en nom collectif qui fournissent, grâce au financement du ministère des Services correctionnels, les services suivants :

- a) des services d'aide aux témoins, aux victimes d'actes criminels ou aux personnes handicapées;
- b) des services d'enseignement, de recherche d'emploi, des services médicaux ou de promotion;
- c) la surveillance de détenus, de personnes en liberté conditionnelle, de probationnaires ou de personnes accusées d'un acte criminel;
- d) des services de placement en établissement communautaire.

MINISTÈRE DE L'ÉDUCATION

1 Centre franco-ontarien de ressources pédagogiques.

MINISTÈRE DE LA SANTÉ

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisation de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) un service d'ambulance, aux termes d'un permis délivré en vertu de la *Loi sur les services d'ambulance* (L.R.O. 1980, chap. 20);
- b) une maison de soins infirmiers, aux termes d'un permis délivré en vertu de la *Loi sur les maisons de soins infirmiers* (L.R.O. 1980, chap. 320);

- (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the *Laboratory and Specimen Collection Centre Licensing Act* (R.S.O. 1980, c. 409);
 - (d) a psychiatric facility within the meaning of the *Mental Health Act* (R.S.O. 1980, c. 262), the operation of which is funded in whole or in part by the Ministry of Health;
 - (e) a home for special care established, approved or licensed under the *Homes for Special Care Act* (R.S.O. 1980, c. 202);
 - (f) a home care facility within the meaning of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197) or a facility which, by arrangement with any such home care facility,
 - (i) supplies nursing, physiotherapy, occupational therapy or speech therapy services that are insured home care services under section 44 of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197), and
 - (ii) is entitled to payment from the home care facility for or in respect of supplying such services;
 - (g) a rehabilitation centre or a crippled children's centre listed in Schedule 10 to Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197);
 - (h) a detoxification centre the operation of which is funded in whole or in part by the Ministry of Health;
 - (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health;
 - (j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Ministry of Health.
2. A district health council appointed under the *Ministry of Health Act* (R.S.O. 1980, c. 280).
 3. A laundry that is operated exclusively for one or more than one hospital.
 4. Hospital Food Services—Ontario Inc.
 5. Toronto District Heating Corporation.
 6. Addiction Research Foundation.
 7. The operations in Ontario of the Canadian Red Cross Society, other than the provision by the society of home support services for the elderly and homemaking services.
 8. The Hospital Council of Metropolitan Toronto.
 9. The Hospital Medical Records Institute.

- c) un laboratoire médical ou un centre de prélèvements, aux termes d'un permis délivré en vertu de la *Loi autorisant des laboratoires médicaux et des centres de prélèvements* (L.R.O. 1980, chap. 409);
- d) un établissement psychiatrique au sens de la *Loi sur la santé mentale* (L.R.O. 1980, chap. 262), dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- e) un foyer de soins spéciaux ouvert, agréé ou autorisé en vertu de la *Loi sur les foyers de soins spéciaux* (L.R.O. 1980, chap. 202);
- f) un établissement de soins à domicile au sens du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197) ou un établissement qui, aux termes d'une entente avec l'établissement de soins à domicile en question, répond aux conditions suivantes :
 - (i) fournit des services de soins infirmiers, des services de physiothérapie, d'ergothérapie ou d'orthophonie qui sont des services de soins à domicile assurés aux termes de l'article 44 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197),
 - (ii) a droit au paiement, en contrepartie ou à l'égard de la fourniture des services en question, de frais qui lui sont versés par l'établissement des services à domicile en question;
- g) un centre de rééducation ou un centre pour enfants infirmes qui figure sur la liste de l'Annexe 10 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197);
- h) un centre de désintoxication dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- i) un service communautaire de santé mentale aux adultes dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, aux termes d'une entente conclue par écrit;
- j) un service de placement dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, conformément à une «Entente de service de coordination des placements» ou d'une autre entente conclue par écrit.

2 Un conseil régional de santé établi en vertu de la *Loi sur le ministère de la Santé* (L.R.O. 1980, chap. 280).

3 Une blanchisserie qui est exploitée exclusivement aux fins d'un hôpital ou plus.

4 Services alimentaires hospitaliers—Ontario Inc.

5 Toronto District Heating Corporation.

6 Fondation de la recherche sur la toxicomanie.

7 Les activités en Ontario de la Société canadienne de la Croix-Rouge, autres que la fourniture de services d'appoint à domicile pour les personnes âgées et de services d'aides familiales.

8 The Hospital Council of Metropolitan Toronto.

9 The Hospital Medical Records Institute.

10. The Ontario Cancer Institute.
11. The Ontario Cancer Treatment and Research Foundation.
12. The Ontario Mental Health Foundation.
13. The Toronto Institute of Medical Technology.

MINISTRY OF INDUSTRY, TRADE AND TECHNOLOGY

1. Metropolitan Toronto Convention Centre.

MINISTRY OF MUNICIPAL AFFAIRS

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,
 - (a) the collection, removal and disposal of garbage and other refuse for a municipality;
 - (b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.

MINISTRY OF NATURAL RESOURCES

1. Conservation Authorities established under the *Conservation Authorities Act* (R.S.O. 1980, c. 85).

MINISTRY OF TOURISM AND RECREATION

1. St. Clair Parkway Commission.

MINISTRY OF TREASURY AND ECONOMICS

1. Ontario Municipal Employees Retirement Board.

- 10 The Ontario Cancer Institute.
- 11 The Ontario Cancer Treatment and Research Foundation.
- 12 The Ontario Mental Health Foundation.
- 13 The Toronto Institute of Medical Technology.

**MINISTÈRE DE L'INDUSTRIE, DU COMMERCE ET DE LA
TECHNOLOGIE**

- 1 Metropolitan Toronto Convention Centre.

MINISTÈRE DES AFFAIRES MUNICIPALES

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) la collecte, l'enlèvement et l'élimination des ordures ménagères et d'autres déchets pour le compte d'une municipalité;
- b) le maintien et l'exploitation d'autobus pour le transport de passagers aux termes d'une entente conclue avec une municipalité.

MINISTÈRE DES RICHESSES NATURELLES

1 Les offices de protection de la nature créés en vertu de la *Loi sur les offices de protection de la nature* (L.R.O. 1980, chap. 85).

MINISTÈRE DU TOURISME ET DES LOISIRS

- 1 St. Clair Parkway Commission.

MINISTÈRE DU TRÉSOR ET DE L'ÉCONOMIE

1 La Commission du régime de retraite des employés municipaux de l'Ontario.

Bill 154

(Chapter 34
Statutes of Ontario, 1987)

An Act to provide
for Pay Equity

The Hon. I. Scott
*Minister responsible for
Women's Issues*

<i>1st Reading</i>	November 24th, 1986
<i>2nd Reading</i>	February 3rd, 1987
<i>3rd Reading</i>	June 15th, 1987
<i>Royal Assent</i>	June 29th, 1987



Projet de loi 154

(Chapitre 34
Lois de l'Ontario de 1987)

Loi portant établissement
de l'équité salariale

L'honorable I. Scott
*ministre délégué à la
Condition féminine*

<i>1^{re} lecture</i>	24 novembre 1986
<i>2^e lecture</i>	3 février 1987
<i>3^e lecture</i>	15 juin 1987
<i>sanction royale</i>	29 juin 1987

Bill 154

1987

An Act to provide
for Pay Equity

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Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario;

Projet de loi 154

1987

Loi portant établissement de l'équité salariale

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Préambule

Attendu qu'il est souhaitable que des mesures concrètes
soient prises aux fins d'éliminer la discrimination fondée sur le
sexe en matière de rétribution des employés oeuvrant dans
des catégories d'emplois à prédominance féminine en Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

General

Definitions

1.—(1) In this Act,

“agent
négociateur”
R.S.O. 1980,
c. 228

“bargaining agent” means a trade union as defined in the *Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees;

“convention
collective”

“collective agreement” means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment;

“Commis-
sion”

“Commission” means the Pay Equity Commission of Ontario established by this Act;

“réttribution”

“compensation” means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount;

“date
d’entrée
en vigueur”

“effective date” means the day this Act comes into force;

“employé”

“employee” does not include a student employed for his or her vacation period;

“éta-
blisse-
ment”

“establishment” means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15;

“catégorie
d’emplois à
prédominance
féminine”

“female job class” means, except where there has been a decision that a job class is a male job class as described in clause (b) of the definition of “male job class”,

- (a) a job class in which 60 per cent or more of the members are female,

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

PARTIE I

Dispositions générales

1 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

«agent de révision» Personne désignée comme agent de révision aux termes du paragraphe 34 (1). «review officer»

«agent négociateur» S'entend d'un syndicat au sens de la *Loi sur les relations de travail*, en sa qualité d'agent négociateur exclusif aux termes de cette loi à l'égard d'une ou de plusieurs unités de négociation au sein d'un établissement. S'entend en outre d'une organisation qui représente des employés auxquels s'applique la présente loi, si cette organisation est titulaire de droits exclusifs de négociation en vertu d'une autre loi à l'égard de ces employés. «bargaining agent»
L.R.O. 1980, chap. 228

«catégorie d'emplois» Les postes qui présentent, au sein d'un établissement, des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution, un même niveau de salaire ou une même gamme de taux de salaire. «job class»

«catégorie d'emplois à prédominance féminine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance masculine telle que décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance masculine» : «female job class»

a) d'une catégorie d'emplois dont 60 pour cent ou plus des membres sont des femmes;

b) d'une catégorie d'emplois qu'un agent de révision ou que le Tribunal décide de désigner comme catégorie d'emplois à prédominance féminine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance féminine.

«catégorie d'emplois à prédominance masculine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine telle que «male job class»

- (b) a job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class;

“zone
géogra-
phique”

“geographic division” means,

R.S.O. 1980,
c. 497

- (a) a county, territorial district or regional municipality described in the *Territorial Division Act*,

- (b) The Municipality of Metropolitan Toronto,

and for the purposes of this Act, the Territorial District of Sudbury and The Regional Municipality of Sudbury shall be considered to be one geographic division;

“Tribunal”

“Hearings Tribunal” means the Pay Equity Hearings Tribunal established by this Act;

“catégorie
d'emplois”

“job class” means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates;

“taux de
catégorie”

“job rate” means the highest rate of compensation for a job class;

“catégorie
d'emplois à
prédominance
masculine”

“male job class” means, except where there has been a decision that a job class is a female job class as described in clause (b) of the definition of “female job class”,

- (a) a job class in which 70 per cent or more of the members are male, or

- (b) a job class that a review officer or the Hearings Tribunal decides is a male job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a male job class;

“ministre”

“Minister” means the Minister of Labour;

“programme
d'équité
salariale”

“pay equity plan” means a document as described in section 13;

décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance féminine» :

- a) d'une catégorie d'emplois dont 70 pour cent ou plus des membres sont des hommes;
- b) d'une catégorie d'emplois qu'un agent de révision ou que le Tribunal décide de désigner comme catégorie d'emplois à prédominance masculine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance masculine.

«Commission» La Commission de l'équité salariale de l'Ontario créée par la présente loi. «Commission»

«convention collective» Convention écrite conclue entre un employeur et un agent négociateur et qui traite des conditions d'emploi. «collective agreement»

«date d'entrée en vigueur» Le jour de l'entrée en vigueur de la présente loi. «effective date»

«employé» Sont exclus les étudiants employés pendant leurs vacances. «employee»

«établissement» Tous les employés d'un employeur employés dans une même zone géographique ou des zones géographiques convenues aux termes de l'article 14 ou déterminées aux termes de l'article 15. «establishment»

«ministre» Le ministre du Travail. «Minister»

«programme d'équité salariale» Document décrit à l'article 13. «pay equity plan»

«règlements» Les règlements pris en application de la présente loi. «regulations»

«rétribution» Tous les paiements et avantages versés ou accordés à la personne qui exerce des fonctions lui donnant droit au versement d'une somme fixe ou vérifiable, ou au profit de cette personne. «compensation»

«secteur privé» Tous les employeurs qui ne font pas partie du secteur public. «private sector»

«secteur public» Tous les employeurs qui sont mentionnés à l'annexe. «public sector»

- “secteur privé” “private sector” means all of the employers who are not in the public sector;
- “secteur public” “public sector” means all of the employers who are referred to in the Schedule;
- “règlements” “regulations” means the regulations made under this Act;
- “agent de révision” “review officer” means a person designated as a review officer under subsection 34 (1).
- Posting (2) Where this Act requires that a document be posted in the work place, the employer shall post a copy of the document in prominent places in each work place for the establishment to which the document relates in such a manner that it may be read by all of the employees in the work place.
- Idem (3) The employer shall provide a copy of every document posted in the work place under this Act,
- (a) to the bargaining agent, if any, that represents the employees who are affected by the document;
 - (b) to any employee who requests a copy of the document, if the employee is not represented by a bargaining agent and the employee is affected by the document.
- Calculation of number of employees (4) If Part II or III applies to an employer, a reference in this Act to the number of employees of the employer shall be deemed to be a reference to the average number of employees employed in Ontario by the employer during the twelve-month period preceding the effective date or during the period from the day the first employee commenced employment in Ontario with the employer until the effective date, whichever period is shorter.
- Decisions re job classes (5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of

«taux de catégorie» Taux de rétribution le plus élevé relié à «job rate» une catégorie d'emplois donnée.

«Tribunal» Le Tribunal de l'équité salariale créé par la présente loi. «Hearings Tribunal»

«zone géographique» S'entend : «geographic division»

a) d'un comté, d'un district territorial ou d'une municipalité régionale au sens de la *Loi sur la division territoriale*; L.R.O. 1980, chap. 497

b) de la municipalité de la communauté urbaine de Toronto.

Pour l'application de la présente loi, le district territorial de Sudbury et la municipalité régionale de Sudbury sont considérés comme formant une seule zone géographique.

(2) Lorsque la présente loi exige l'affichage d'un écrit sur les lieux de travail, l'employeur en affiche un exemplaire dans des endroits bien en vue dans chaque lieu de travail de l'établissement auquel se rapporte l'écrit, de façon que tous les employés puissent le consulter. Affichage

(3) L'employeur fournit une copie de chaque écrit affiché sur les lieux de travail aux termes de la présente loi : Idem

a) à l'agent négociateur, le cas échéant, qui représente les employés qui sont concernés par l'écrit;

b) à tout employé qui demande une copie de l'écrit, si cet employé n'est pas représenté par un agent négociateur et que l'employé est concerné par l'écrit.

(4) Si les parties II ou III s'appliquent à un employeur, la mention dans la présente loi du nombre d'employés de l'employeur est réputée une mention du nombre moyen d'employés de l'employeur en Ontario au cours de la plus courte des périodes suivantes : soit la période de douze mois qui précède la date d'entrée en vigueur, soit la période qui se situe entre la date du début en Ontario de l'emploi, au service de l'employeur, du premier employé et la date d'entrée en vigueur. Calcul du nombre d'employés

(5) Aux fins de décider si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, ou de convenir de la prédominance d'une catégorie d'emplois, il est tenu compte du sexe des personnes qui exercent traditionnellement ces Détermination de la catégorie d'emplois

work and such other criteria as may be prescribed by the regulations.

One-member
job classes

(6) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule, salary grade or range of salary rates are not similar to those of any other position in the establishment.

Disabled,
etc.,
not to be
classed
separately

(7) A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties and responsibilities, require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates only because the needs of the occupant of the position have been accommodated for the purpose of complying with the *Human Rights Code, 1981*.

1981, c. 53

Combined
establish-
ments

2.—(1) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Idem

(2) Two or more employers who are municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining agent, the employees, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Employers
to implement
plans

(3) Notwithstanding that the employees of two or more employers are considered to be one establishment under subsection (1) or (2), each employer is responsible for implementing and maintaining the pay equity plan with respect to the employer's employees.

Application

3.—(1) This Act applies to all employers in the private sector in Ontario who employ ten or more employees, all employers in the public sector, the employees of employers to whom this Act applies and to their bargaining agents, if any.

emplois, des stéréotypes sexuels attachés à des domaines d'emplois, ainsi que des autres critères qui peuvent être prescrits par les règlements.

(6) Une catégorie d'emplois peut ne comprendre qu'un seul poste, si celui-ci est d'un caractère unique au sein de l'établissement en raison du fait que les fonctions, les responsabilités, les qualités requises, les procédures de recrutement ou la grille de rétribution, le niveau de salaire ou la gamme de taux de salaire qui lui sont reliés ne sont pas semblables à ceux qui sont reliés aux autres postes au sein de l'établissement.

Catégorie d'emplois à membre unique

(7) Un poste ne doit pas, uniquement à cause du fait qu'il a été tenu compte des besoins de son titulaire afin d'observer le *Code des droits de la personne (1981)*, être placé dans une catégorie d'emplois différente de celle d'autres postes du même établissement qui présentent des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution, un même niveau de salaire ou une même gamme de taux de salaire.

Interdiction de classer les personnes handicapées, etc., séparément 1981, chap. 53

2 (1) Lorsque deux employeurs ou plus rencontrent l'agent négociateur ou les agents négociateurs de leurs employés en vue de négocier une convention centrale, ils peuvent convenir qu'aux fins d'un programme d'équité salariale, tous les employés ne constituent qu'un seul établissement et tous les employeurs sont réputés un seul employeur.

Établissements combinés

(2) Deux employeurs ou plus qui sont des municipalités situées dans la même zone géographique et l'agent négociateur ou les agents négociateurs de leurs employés, ou, s'il n'y a pas d'agent négociateur, les employés, peuvent convenir qu'aux fins d'un programme d'équité salariale, les employés ne constituent qu'un seul établissement, et les employeurs sont réputés un seul employeur.

Idem

(3) Malgré le fait que des employés de deux ou plusieurs employeurs sont réputés ne constituer qu'un seul établissement aux termes du paragraphe (1) ou (2), chaque employeur est responsable de la mise en oeuvre et du maintien du programme d'équité salariale visant les employés de l'employeur.

Les employeurs responsables des programmes

3 (1) La présente loi s'applique à tous les employeurs du secteur privé en Ontario qui emploient dix employés ou plus, à tous les employeurs du secteur public, aux employés des employeurs auxquels s'applique la présente loi, ainsi qu'aux agents négociateurs de ces employés, le cas échéant.

Champ d'application

Idem	(2) If at any time after the coming into force of this Act an employer employs ten or more employees in Ontario, this Act applies with respect to the employer although the number of employees is subsequently reduced to fewer than ten.
Purpose	4. —(1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.
Identification of systemic gender discrimination	(2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed.
Value determination	5. —(1) For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.
Idem, disabled employees, etc. 1981, c. 53	(2) The fact that an employee's needs have been accommodated for the purpose of complying with the <i>Human Rights Code, 1981</i> shall not be considered in determining the value of work performed.
Achievement of pay equity	6. —(1) For the purposes of this Act, pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value.
Idem	(2) Where there is no male job class with which to make a comparison for the purposes of subsection (1), pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate of a male job class in the same establishment that at the time of comparison had a higher job rate but performs work of lower value than the female job class.
Basis of comparison	(3) If more than one comparison is possible between a female job class in an establishment and male job classes in the same establishment, pay equity is achieved when the job

(2) Lorsqu'un employeur emploie dix employés ou plus en Ontario après l'entrée en vigueur de la présente loi, celle-ci s'applique à lui, même si le nombre de ses employés est par la suite réduit à moins de dix. Idem

4 (1) La présente loi a pour objet d'éliminer la discrimination systémique entre les sexes, en ce qui concerne la rétribution du travail effectué par les employés dans les catégories d'emplois à prédominance féminine. Objet

(2) Le repérage de la discrimination systémique entre les sexes en ce qui concerne la rétribution se fait au moyen de comparaisons établies entre chacune des catégories d'emplois à prédominance féminine et les catégories d'emplois à prédominance masculine dans un même établissement au niveau de la rétribution et de la valeur du travail accompli. Repérage de la discrimination systémique entre les sexes

5 (1) Pour l'application de la présente loi, le critère qui sert à déterminer la valeur du travail se fonde sur l'habileté, l'effort et la responsabilité qu'exige normalement l'accomplissement de ce travail, ainsi que sur les conditions dans lesquelles il est normalement effectué. Détermination de la valeur

(2) Le fait qu'il a été tenu compte des besoins d'un employé afin d'observer le *Code des droits de la personne (1981)* n'est pas pris en considération dans la détermination de la valeur du travail effectué. Idem, personnes handicapées, etc. 1981, chap. 53

6 (1) Pour l'application de la présente loi, l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie relié à une catégorie d'emplois à prédominance masculine dans le même établissement, si le travail effectué au niveau des deux catégories est de valeur égale ou comparable. Équité salariale atteinte

(2) S'il n'existe aucune catégorie d'emplois à prédominance masculine avec laquelle peut être établie une comparaison pour l'application du paragraphe (1), l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie d'une catégorie d'emplois à prédominance masculine du même établissement qui avait, au moment de la comparaison, un taux de catégorie supérieur, mais qui effectue un travail d'une valeur inférieure à celui de la catégorie d'emplois à prédominance féminine. Idem

(3) Si une catégorie d'emplois à prédominance féminine dans un établissement et des catégories d'emplois à prédominance masculine dans le même établissement se prêtent à plusieurs comparaisons, l'équité salariale est atteinte lorsque le Fondement de la comparaison

rate for the female job class is at least as great as the job rate for the male job class,

- (a) with the lowest job rate, if the work performed in both job classes is of equal or comparable value; or
- (b) with the highest job rate, if the work performed in the male job class is of less value.

Idem

(4) Comparisons required by this Act,

- (a) for job classes inside a bargaining unit, shall be made between job classes in the bargaining unit; and
- (b) for job classes outside any bargaining unit, shall be made between job classes that are outside any bargaining unit.

Idem

(5) If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment.

Groups
of jobs

(6) An employer may treat job classes that are arranged in a group of jobs as one female job class if 60 per cent or more of the employees in the group are female.

Idem

(7) An employer shall treat job classes that are arranged in a group of jobs as one female job class if a review officer or the Commission decides that the group should be treated as one female job class.

Idem

(8) An employer may, with the agreement of the bargaining agent, if any, for the employees of the employer, decide to treat job classes that are arranged in a group of jobs as one female job class.

taux de catégorie relié à la catégorie d'emplois à prédominance féminine est au moins égal au taux de catégorie relié à la catégorie d'emplois à prédominance masculine :

- a) qui a le taux de catégorie le plus bas, si le travail effectué dans les deux catégories d'emplois est de valeur égale ou comparable;
- b) qui a le taux de catégorie le plus élevé, si le travail effectué dans la catégorie d'emplois à prédominance masculine est de valeur inférieure.

(4) Les comparaisons exigées par la présente loi sont Idem établies :

- a) entre des catégories d'emplois qui appartiennent à l'unité de négociation, en ce qui concerne les catégories d'emplois appartenant à une unité de négociation;
- b) entre des catégories d'emplois qui n'appartiennent à aucune unité de négociation, en ce qui concerne les catégories d'emplois n'appartenant pas à une unité de négociation.

(5) Lorsque, après l'application du paragraphe (4), il ne se trouve aucune catégorie d'emplois à prédominance masculine dans laquelle s'effectue un travail de valeur égale ou comparable au travail qui s'effectue dans la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison, celle-ci est comparée aux catégories d'emplois à prédominance masculine de l'ensemble de l'établissement. Idem

(6) L'employeur peut traiter des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine si 60 pour cent ou plus des employés du groupe sont des femmes. Groupes d'emplois

(7) L'employeur traite des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine si un agent de révision ou la Commission décide que le groupe doit être traité comme une catégorie d'emplois à prédominance féminine. Idem

(8) L'employeur peut, avec l'assentiment de l'agent négociateur des employés de l'employeur, le cas échéant, décider de traiter des catégories d'emplois qui sont réunies dans un groupe d'emplois comme une seule catégorie d'emplois à prédominance féminine. Idem

Job rate,
value of
work

(9) Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group and the value of the work performed by that individual job class is the value of the work performed by the group.

Definition
"groupe
d'emplois"

(10) In this section, "group of jobs" means a series of job classes that bear a relationship to each other because of the nature of the work required to perform the work of each job class in the series and that are organized in successive levels.

Pay equity
required

7.—(1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

Idem

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1).

Exclusions
from
determination

8.—(1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

- (a) a formal seniority system that does not discriminate on the basis of gender;
- (b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
- (c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
- (d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or

(9) Lorsque l'employeur traite un groupe d'emplois comme une catégorie d'emplois à prédominance féminine, le taux de catégorie de la catégorie d'emplois particulière au sein du groupe qui comporte le plus grand nombre d'employés est le taux de catégorie de ce groupe. La valeur du travail effectué par la catégorie particulière est la valeur du travail effectué par le groupe.

Taux de
catégorie,
valeur du
travail

(10) Dans le présent article, «groupe d'emplois» s'entend d'une série de catégories d'emplois qui sont reliées entre elles en raison de la nature des tâches que comporte chaque catégorie d'emplois de la série, et réparties en grades consécutifs.

Définition
«group of
jobs»

7 (1) L'employeur établit et maintient des pratiques de rétribution assurant l'équité salariale dans chacun de ses établissements.

Équité
salariale
obligatoire

(2) Il est interdit à l'employeur et à l'agent négociateur de négociier en vue d'obtenir l'établissement ou le maintien de pratiques de rétribution qui, si elles étaient adoptées, entraîneraient une contravention au paragraphe (1). Il leur est également interdit de convenir de telles pratiques.

Idem

8 (1) La présente loi n'a pas pour effet d'empêcher un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine, si l'employeur peut démontrer que l'écart résulte :

Exceptions

- a) d'un système organisé d'ancienneté exempt de discrimination fondée sur le sexe;
- b) d'un programme d'affectations temporaires de formation ou de perfectionnement des employés dont peuvent se prévaloir également les employés féminins et les employés masculins et qui mène à l'avancement de ceux qui y participent;
- c) d'un régime de rétribution au mérite fondé sur un système organisé d'évaluation du rendement préalablement porté à la connaissance des employés et exempt de discrimination fondée sur le sexe;
- d) de la pratique de gestion du personnel dite du «salaire étoilé» lorsque, à la suite d'un processus non sexiste de réévaluation, un poste a été déclassé et que la rétribution de l'employé a été bloquée ou que toute augmentation de sa rétribution a été suspendue jusqu'à ce que la rétribution reliée au poste déclassé devienne égale ou supérieure à la rétribution de l'employé;

- (e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Idem

(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

Idem

(3) A position that an employer designates as a position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a pay equity plan.

Idem

(4) A position shall not be designated under subsection (3) if,

- (a) the work is performed for at least one-third of the normal work period that applies to similar full-time work;
- (b) the work is performed on a seasonal basis in the same position for the same employer; or
- (c) the work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work.

Reduction of
compensation
prohibited

9.—(1) An employer shall not reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve pay equity.

Intimidation
prohibited

(2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

- (a) because the person may participate, or is participating, in a proceeding under this Act;

- e) de l'absence de main-d'oeuvre qualifiée qui engendre une inflation temporaire de la rétribution provoquée par la difficulté qu'éprouve l'employeur à recruter des employés satisfaisant aux exigences des postes au sein d'une catégorie d'emplois.

(2) Lorsque l'équité salariale est atteinte dans un établissement, la présente loi n'a pas pour effet d'empêcher des écarts de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine si l'employeur peut démontrer que l'écart résulte de différences au niveau du pouvoir de négociation. Idem

(3) Aux fins de déterminer si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, il n'est pas nécessaire de tenir compte des postes que l'employeur désigne comme postes qui procurent de l'emploi occasionnel. Les postes ainsi désignés peuvent également être exclus lors des rajustements de la rétribution effectués en vertu d'un programme d'équité salariale. Idem

(4) Un poste n'est pas désigné aux termes du paragraphe (3) si, selon le cas : Idem

- a) la durée du travail est égale ou supérieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps;
- b) le travail est effectué sur une base saisonnière pour le compte du même employeur et dans le cadre du même poste;
- c) le travail est effectué sur une base régulière et continue, quoique durant une période inférieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps.

9 (1) L'employeur ne doit pas diminuer la rétribution payable à un employé ni réduire le taux de rétribution rattaché à un poste afin d'atteindre l'équité salariale. Réduction de la rétribution interdite

(2) Il est interdit à l'employeur, à l'employé, à l'agent négociateur, ainsi qu'à leurs mandataires d'intimider, de contraindre, de pénaliser une personne ou d'exercer une discrimination à son égard pour l'un des motifs suivants : Manoeuvres d'intimidation interdites

- a) elle participe ou pourrait participer à une instance intentée en vertu de la présente loi;

- (b) because the person has made, or may make, a disclosure required in a proceeding under this Act;
- (c) because the person is exercising, or may exercise, any right under this Act; or
- (d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.

Compensation
adjustments

(3) Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms.

PART II

Implementation: Public Sector and Large Private Sector Employers

Definition
"date
d'affichage
obligatoire"

10. In this Part, "mandatory posting date" means,

- (a) the second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date;
- (b) the third anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date;
- (c) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20; and
- (d) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least

- b) elle a déjà fait ou pourrait faire une divulgation exigée lors d'une instance intentée en vertu de la présente loi;
- c) elle exerce ou pourrait exercer un droit en vertu de la présente loi;
- d) elle a déjà agi ou pourrait agir conformément à la présente loi, aux règlements ou à un ordre ou une ordonnance pris en vertu de la présente loi, ou a déjà demandé ou pourrait demander l'exécution de la présente loi, des règlements ou d'un ordre ou d'une ordonnance pris en vertu de la présente loi.

(3) S'il est nécessaire d'augmenter le taux de rétribution d'une catégorie d'emplois afin d'atteindre l'équité salariale, tous les postes dans cette catégorie d'emplois reçoivent le même taux de rajustement, en termes absolus.

Rajustements
de la
rétribution

PARTIE II

Mise en oeuvre : employeurs du secteur public et grands
employeurs du secteur privé

10 Dans la présente partie, «date d'affichage obligatoire» s'entend :

Définition
«mandatory
posting
date»

- a) du deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur public et en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur;
- b) du troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur;
- c) du quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20;
- d) du cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cin-

ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Application

11.—(1) This Part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees and those employers in the private sector who post a notice under section 20.

Idem

(2) This Part does not apply to an employer who does not have employees on the effective date.

Comparison
of
job classes

12. Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class.

Pay equity
plans
required

13.—(1) Documents, to be known as pay equity plans, shall be prepared in accordance with this Part to provide for pay equity for the female job classes in each establishment of every employer to whom this Part applies and, without restricting the generality of the foregoing,

- (a) shall identify the establishment to which the plan applies; and
- (b) shall identify all job classes which formed the basis of the comparisons under section 12.

Idem

(2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment,

- (a) shall describe the gender-neutral comparison system used for the purposes of section 12;
- (b) shall set out the results of the comparisons carried out under section 12;
- (c) shall identify all positions and job classes in which differences in compensation are permitted by sub-

quante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20.

11 (1) La présente partie s'applique à tous les employeurs du secteur public et aux employeurs du secteur privé qui, à la date d'entrée en vigueur, ont 100 employés ou plus à leur service, ainsi qu'aux employeurs du secteur privé qui affichent l'avis visé à l'article 20.

Champ
d'application

(2) La présente partie ne s'applique pas à l'employeur qui, à la date d'entrée en vigueur, n'a aucun employé à son service.

Idem

12 Avant la date d'affichage obligatoire, l'employeur auquel s'applique la présente partie établit des comparaisons, au moyen d'un système non sexiste de comparaison, entre les catégories d'emplois à prédominance féminine de chacun de ses établissements et les catégories d'emplois à prédominance masculine des mêmes établissements aux fins de déterminer si l'équité salariale existe à l'égard de chaque catégorie d'emplois à prédominance féminine.

Comparaison
des catégories
d'emplois

13 (1) Il est élaboré, conformément à la présente partie, des documents connus sous l'appellation de programmes d'équité salariale, visant à assurer l'équité salariale à l'égard des catégories d'emplois à prédominance féminine au sein de chacun des établissements de chaque employeur auquel s'applique la présente partie. Ces programmes comprennent notamment :

Programmes
obligatoires
d'équité
salariale

- a) le repérage de l'établissement visé par le programme;
- b) le repérage de toutes les catégories d'emplois sur lesquelles se fondent les comparaisons visées à l'article 12.

(2) Si un établissement comporte à la fois des catégories d'emplois à prédominance féminine et des catégories d'emplois à prédominance masculine, chaque programme d'équité salariale relatif à l'établissement :

Idem

- a) expose le système non sexiste de comparaison utilisé pour l'application de l'article 12;
- b) énonce les résultats des comparaisons établies aux termes de l'article 12;
- c) repère tous les postes et toutes les catégories d'emplois dans lesquels les paragraphes 8 (1) ou (3) per-

section 8 (1) or (3) and give the reasons for relying on such subsection;

- (d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 12, describe how the compensation in those job classes will be adjusted to achieve pay equity; and
- (e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,
 - (i) the second anniversary of the effective date, in respect of employers in the public sector,
 - (ii) the third anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date,
 - (iii) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,
 - (iv) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and
 - (v) the sixth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Idem

(3) A pay equity plan shall provide that the female job class or classes that have, at any time during the implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until

mettent des écarts de rétribution, et donne les motifs du recours à ces paragraphes;

- d) expose, à l'égard de toutes les catégories d'emplois à prédominance féminine où l'équité salariale n'existe pas selon les comparaisons établies aux termes de l'article 12, le mode de rajustement de la rétribution choisi pour atteindre l'équité salariale;
- e) énonce la date à laquelle seront effectués les premiers rajustements de la rétribution en vertu du programme. Cette date ne peut être postérieure :
 - (i) au deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur public,
 - (ii) au troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur,
 - (iii) au quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur,
 - (iv) au cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20,
 - (v) au sixième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cinquante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 20.

(3) Un programme d'équité salariale prévoit qu'il sera accordé à la catégorie ou aux catégories d'emplois à prédominance féminine qui ont, pendant la période de mise en oeuvre du programme, le taux de catégorie le plus bas, une augmentation du taux de rétribution aux termes du programme qui est supérieure aux augmentations accordées aux termes du programme aux autres catégories d'emplois à prédominance féminine, jusqu'à ce que le taux de catégorie de la catégorie

Idem

such time as the job rate for the female job class or classes receiving the greater increases is equal to the lesser of,

- (a) the job rate required to achieve pay equity; and
- (b) the job rate of the female job class or classes entitled to receive an adjustment under the plan with the next lowest job rate.

Minimum
adjustments

(4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2) (e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and
- (b) the amount required to achieve pay equity.

Idem

(5) Adjustments shall be made in compensation under a pay equity plan on each anniversary of the first adjustments in compensation under the plan and shall be such that during the twelve-month period following each anniversary the combined compensation payable under all pay equity plans of the employer shall be increased by an amount that is not less than the lesser of,

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the anniversary; and
- (b) the amount required to achieve pay equity.

Maximum
adjustments

(6) Except for the purpose of making retroactive adjustments in compensation under a pay equity plan or unless

ou des catégories d'emplois à prédominance féminine qui reçoivent l'augmentation supérieure soit égal au moins élevé des taux suivants :

- a) le taux de catégorie nécessaire pour atteindre l'équité salariale;
- b) le taux de catégorie de la catégorie ou des catégories d'emplois à prédominance féminine ayant droit à un rajustement aux termes du programme et dont le taux de catégorie se classe immédiatement au-dessus de celui de la catégorie ou des catégories d'emplois visées.

(4) Les premiers rajustements de la rétribution en vertu d'un programme d'équité salariale sont versables à la date prévue à l'alinéa (2) e) et sont tels que la rétribution combinée payable aux termes de l'ensemble des programmes d'équité salariale de l'employeur au cours des douze mois qui suivent les premiers rajustements est majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

Rajustements
minimaux

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède les premiers rajustements;
- b) la somme nécessaire pour atteindre l'équité salariale.

(5) Chaque anniversaire des premiers rajustements de la rétribution en vertu d'un programme d'équité salariale, des rajustements à la rétribution sont effectués en vertu du programme. Ces rajustements additionnels sont effectués de façon que la rétribution combinée payable aux termes de l'ensemble des programmes d'équité salariale de l'employeur au cours de la période de douze mois qui suit chaque anniversaire soit majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

Idem

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède l'anniversaire;
- b) la somme nécessaire pour atteindre l'équité salariale.

(6) Sauf dans le but d'effectuer des rajustements rétroactifs à la rétribution en vertu d'un programme d'équité salariale ou

Rajustements
maximaux

required to do so by an order described in clause 36 (g), nothing in this Act requires an employer to increase compensation payable under the pay equity plans of the employer during a twelve-month period in an amount greater than 1 per cent of the employer's payroll during the preceding twelve-month period.

Exception

(7) Notwithstanding subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the seventh anniversary of the effective date.

Definition
"feuille de
paie"

(8) In this section, "payroll" means the total of all wages and salaries payable to the employees in Ontario of the employer.

Pay equity
plan binding

(9) A pay equity plan that is approved under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to
prevail

(10) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Deemed
compliance

(11) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the effective date.

Establish-
ments with
bargaining
units

14.—(1) In an establishment in which any of the employees are represented by a bargaining agent, there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit.

Bargaining
unit plans

(2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,

- (a) the gender-neutral comparison system used for the purposes of section 12; and

à moins qu'il y soit tenu aux termes d'une ordonnance visée à l'alinéa 36 g), la présente loi n'a pas pour effet d'obliger un employeur à majorer la rétribution payable aux termes des programmes d'équité salariale de l'employeur au cours d'une période de douze mois d'une somme qui représente plus de 1 pour cent de la feuille de paie de l'employeur relative à la période précédente de douze mois.

(7) Malgré le paragraphe (6), les programmes d'équité salariale du secteur public prévoient les rajustements de la rétribution de manière à ce que ces programmes soient pleinement mis en oeuvre au plus tard le septième anniversaire de la date d'entrée en vigueur. Exception

(8) Dans le présent article, «feuille de paie» s'entend de la totalité des salaires et traitements payables aux employés de l'employeur en Ontario. Définition
«payroll»

(9) Le programme d'équité salariale approuvé aux termes de la présente partie lie l'employeur et les employés auxquels il s'applique, ainsi que leur agent négociateur, le cas échéant. Le programme d'équité salariale lie les parties

(10) Le programme d'équité salariale approuvé aux termes de la présente partie l'emporte sur toute convention collective pertinente. Les rajustements des taux de rétribution qu'exige le programme sont réputés incorporés aux conventions collectives pertinentes et en faire partie intégrante. Le programme l'emporte

(11) L'employeur qui prépare et met en oeuvre un programme d'équité salariale aux termes de la présente partie est réputé ne pas contrevenir au paragraphe 7 (1) en ce qui concerne les employés visés par le plan ou les plans qui s'appliquent aux employés, mais seulement en ce qui a trait aux pratiques de rétribution qui existaient immédiatement avant la date d'entrée en vigueur. Conformité réputée

14 (1) Il doit être élaboré, dans tout établissement où des employés sont représentés par un agent négociateur, un programme d'équité salariale relié à chaque unité de négociation, ainsi qu'un programme d'équité salariale relié à la partie de l'établissement dont les membres n'appartiennent pas à une unité de négociation. Établissements dotés d'unités de négociation

(2) L'employeur et l'agent négociateur d'une unité de négociation négocient de bonne foi et s'efforcent de convenir, avant à la date d'affichage obligatoire : Programmes reliés à une unité de négociation

- a) du système non sexiste de comparaison utilisé pour l'application de l'article 12;

(b) a pay equity plan for the bargaining unit.

Idem

(3) As part of the negotiations required by subsection (2), the employer and the bargaining agent may agree, for the purposes of the pay equity plan,

(a) that the establishment of the employer includes two or more geographic divisions; and

(b) that a job class is a female job class or a male job class.

Posting
of plan

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the work place.

Deemed
approval and
first
adjustments

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Failure
to agree

(6) Where an employer and a bargaining agent fail to agree on a pay equity plan by the mandatory posting date, the employer, forthwith after that date, shall give notice of the failure to the Commission.

Idem

(7) Subsection (6) does not prevent the bargaining agent from notifying the Commission of a failure to agree on a pay equity plan by the mandatory posting date.

Non-
bargaining
unit plan

(8) An employer shall prepare a pay equity plan for that part of the employer's establishment that is outside any bargaining unit in the establishment and, on or before the mandatory posting date, shall post a copy of the plan in the work place.

Idem

(9) Subsections 15 (2) to (8) apply to a pay equity plan described in subsection (8).

Establish-
ments
without
bargaining
units

15.—(1) In an establishment where no employee is represented by a bargaining agent, the employer shall prepare a pay equity plan for the employer's establishment and the employer, on or before the mandatory posting date, shall post a copy of the plan in the work place.

- b) d'un programme d'équité salariale relié à l'unité de négociation.

(3) Dans le cadre des négociations exigées par le paragraphe (2), l'employeur et l'agent négociateur peuvent, pour les fins du programme d'équité salariale, convenir de ce qui suit :

Idem

- a) que l'établissement de l'employeur comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(4) L'employeur et l'agent négociateur qui ont convenu d'un programme d'équité salariale y apposent leur signature. À la date d'affichage obligatoire ou antérieurement à celle-ci, l'employeur affiche une copie du programme sur les lieux de travail.

Affichage du programme

(5) Le programme d'équité salariale qui porte la signature de l'employeur et celle de l'agent négociateur est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation réputée et premiers rajustements

(6) Si l'employeur et l'agent négociateur n'ont pas convenu d'un programme d'équité salariale à la date d'affichage obligatoire, l'employeur en avise sans délai la Commission.

Absence d'entente

(7) Le paragraphe (6) n'a pas pour effet d'empêcher l'agent négociateur d'aviser la Commission du défaut de convenir d'un programme d'équité salariale à la date d'affichage obligatoire ou antérieurement à celle-ci.

Idem

(8) L'employeur élabore un programme d'équité salariale destiné aux employés de son établissement qui n'appartiennent à aucune des unités de négociation de l'établissement. À la date d'affichage obligatoire ou antérieurement à celle-ci, il affiche une copie du programme sur les lieux de travail.

Programme non relié à une unité de négociation

(9) Les paragraphes 15 (2) à (8) s'appliquent au programme d'équité salariale décrit au paragraphe (8).

Idem

15 (1) L'employeur dont l'établissement ne compte aucun employé représenté par un agent négociateur élabore un programme d'équité salariale à l'égard de son établissement. L'employeur, à la date d'affichage obligatoire ou antérieurement à celle-ci, affiche une copie du programme sur les lieux de travail.

Établissements dépourvus d'unités de négociation

- Idem (2) For the purposes of a pay equity plan required by this section or subsection 14 (8), the employer may decide,
- (a) that the establishment of the employer includes two or more geographic divisions; and
 - (b) that a job class is a female job class or a male job class.
- Idem (3) An agreement under section 14 between an employer and a bargaining agent shall not affect any pay equity plan required by this section or subsection 14 (8).
- Employee review (4) The employees to whom a pay equity plan required by this section or subsection 14 (8) applies shall have until the ninetieth day after the mandatory posting date to review and submit comments to the employer on the plan.
- Changes (5) If as a result of comments received during the review period referred to in subsection (4), the employer is of the opinion that a pay equity plan should be changed, the employer may change the plan.
- Posting of notice (6) Not later than seven days after the end of the review period referred to in subsection (4), the employer shall post in the work place a notice stating whether the pay equity plan has been amended under this section and, if the plan has been amended, the employer shall also post a copy of the amended plan with the amendments clearly indicated.
- Objections (7) Any employee or group of employees to whom a pay equity plan applies, within thirty days following a posting in respect of the plan under subsection (6), may file a notice of objection with the Commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4).
- Deemed approval and first adjustments (8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

(2) Pour l'application du programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8), l'employeur peut décider :

Idem

- a) que son établissement comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(3) L'entente intervenue en vertu de l'article 14 entre l'employeur et l'agent négociateur n'a pas d'incidence sur le programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8).

Idem

(4) Les employés visés par un programme d'équité salariale exigé par le présent article ou par le paragraphe 14 (8) peuvent examiner le programme et présenter leurs observations à l'employeur jusqu'au quatre-vingt-dixième jour suivant la date d'affichage obligatoire.

Examen par l'employé

(5) L'employeur qui, à la suite des observations reçues au cours de la période d'examen visée au paragraphe (4), est d'avis que des modifications au programme d'équité salariale s'imposent, peut y apporter des modifications.

Modification

(6) Dans les sept jours qui suivent la fin de la période d'examen visée au paragraphe (4), l'employeur affiche sur les lieux de travail un avis qui indique si le programme d'équité salariale a été modifié ou non aux termes du présent article. Si le programme a été modifié, l'employeur affiche également une copie du programme modifié sur laquelle les modifications sont clairement indiquées.

Affichage d'un avis

(7) Dans les trente jours de l'affichage concernant un programme d'équité salariale aux termes du paragraphe (6), l'employé ou le groupe d'employés visés par le programme peuvent déposer un avis d'opposition auprès de la Commission, qu'ils aient présenté ou non leurs observations à l'employeur aux termes du paragraphe (4).

Oppositions

(8) S'il n'est déposé aucune opposition à un programme d'équité salariale auprès de la Commission en vertu du paragraphe (7), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation réputée et premiers rajustements

Investigation
by review
officer and
settlement

16.—(1) If the Commission,

- (a) is advised by an employer or a bargaining agent that no agreement has been reached on a pay equity plan under section 14; or
- (b) receives a notice of objection under subsection 15 (7),

a review officer shall investigate the matter and endeavour to effect a settlement.

Orders by
review officer

(2) If the review officer is unable to effect a settlement as provided for in subsection (1), he or she shall, by order, decide all outstanding matters.

Posting of
plan

(3) Where a review officer effects a settlement under subsection (1) or makes an order under subsection (2), the employer shall forthwith post in the work place a copy of the pay equity plan that reflects the settlement or order.

Objections

(4) Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the Commission within thirty days of the posting as follows:

1. If the plan relates to a bargaining unit, objections may be filed only if the review officer has made an order under subsection (2) and only the employer or the bargaining agent for the bargaining unit may file objections.
2. If the plan does not relate to a bargaining unit and a review officer effected a settlement under subsection (1) with the agreement of the objector who filed the objection under subsection 15 (7), only an employee or group of employees to whom the plan applies, other than the objector, may file an objection.
3. If the plan does not relate to a bargaining unit and a review officer has made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection.

16 (1) Lorsque la Commission :Enquête par
l'agent de
révision et
règlement

- a) ou bien est avisée par l'employeur ou l'agent négociateur qu'aucune entente n'est intervenue au sujet du programme d'équité salariale aux termes de l'article 14;
- b) ou bien reçoit l'avis d'opposition visé au paragraphe 15 (7),

un agent de révision mène une enquête à ce sujet et tente d'amener les parties à accepter un règlement.

(2) Si l'agent de révision ne peut parvenir à amener les parties à accepter le règlement visé au paragraphe (1), il règle toutes les questions en souffrance au moyen d'un ordre.

Ordre de
l'agent de
révision

(3) Si l'agent de révision amène les parties à accepter un règlement aux termes du paragraphe (1) ou donne un ordre aux termes du paragraphe (2), l'employeur affiche sans délai sur les lieux de travail une copie du programme d'équité salariale qui reflète le règlement ou l'ordre.

Affichage du
programme

(4) Des oppositions au programme d'équité salariale affiché en vertu du paragraphe (3), peuvent être déposées auprès de la Commission dans les trente jours de l'affichage, selon les modalités suivantes :

Oppositions

1. Si le programme est relié à une unité de négociation, des oppositions peuvent être déposées seulement si l'agent de révision a donné un ordre aux termes du paragraphe (2). Dans ce cas, seuls l'employeur ou l'agent négociateur de l'unité de négociation peuvent déposer une opposition.
2. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a amené, aux termes du paragraphe (1), les parties à accepter un règlement avec le consentement de l'opposant qui a déposé l'opposition aux termes du paragraphe 15 (7), seuls un employé ou le groupe d'employés visés par le programme, autre que l'opposant, peuvent déposer une opposition.
3. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a donné un ordre aux termes du paragraphe (2), l'employeur, un employé ou un groupe d'employés visés par le programme peuvent déposer une opposition.

Deemed
approval
and first
adjustments

(5) If a review officer effects a settlement of a pay equity plan for a bargaining unit under subsection (1) or, if in any other case, no objection in respect of a pay equity plan is filed with the Commission in accordance with subsection (4), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Idem

(6) Where adjustments in compensation are made after the day provided for in the pay equity plan, the employer shall make the adjustments retroactive to that date.

Hearing

17.—(1) If the Commission receives a notice of objection under subsection 16 (4), the Hearings Tribunal shall hold a hearing and, in its decision, shall settle the pay equity plan to which the objection relates.

Posting of
plan

(2) Forthwith after receiving the decision of the Hearings Tribunal, the employer shall post a copy of the decision in the work place and, on the day provided for in the plan, shall make the first adjustments in compensation required to achieve pay equity.

Idem

(3) Where adjustments in compensation are made after the day provided for in a pay equity plan, the employer shall make the adjustments retroactive to that date.

PART III

Implementation: Small Private Sector Employers

Application

18. This Part applies only to employers in the private sector who, on the effective date, employ more than nine and fewer than 100 employees.

Pay equity
plans

19. An employer to whom this Part applies may establish pay equity plans for any of the employer's establishments.

Posting of
notice

20.—(1) An employer who decides to establish a pay equity plan or plans for an establishment, as provided for in section 19, shall give notice of the decision to the bargaining agents, if any, for employees in the establishment and shall post a notice of the decision in the work place.

Application
of Part II

(2) Upon the posting of the notice referred to in subsection (1), Part II applies to the establishment to which the notice relates and this Part ceases to apply to the employer with respect to that establishment.

(5) Si un agent de révision amène les parties à accepter, aux termes du paragraphe (1), un règlement relatif à un programme d'équité salariale relié à une unité de négociation, ou que, dans tout autre cas, aucune opposition n'a été déposée auprès de la Commission au sujet d'un programme d'équité salariale aux termes du paragraphe (4), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation
réputée et
premiers
rajustements

(6) Si des rajustements de la rétribution sont effectués après la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

Idem

17 (1) Si la Commission reçoit un avis d'opposition en vertu du paragraphe 16 (4), le Tribunal tient une audience et règle, dans sa décision, le programme d'équité salariale qui fait l'objet de l'opposition.

Audience

(2) Lorsqu'il reçoit la décision du Tribunal, l'employeur en affiche sans délai une copie sur les lieux de travail. À la date prévue au programme, il effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Affichage du
programme

(3) Si des rajustements de la rétribution sont effectués après la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

Idem

PARTIE III

Mise en oeuvre : petits employeurs du secteur privé

18 La présente partie ne s'applique qu'aux employeurs du secteur privé qui, à la date d'entrée en vigueur, ont à leur service plus de neuf, mais moins de 100 employés.

Champ
d'application

19 L'employeur auquel s'applique la présente partie peut établir des programmes d'équité salariale à l'égard de chacun de ses établissements.

Programme
d'équité
salariale

20 (1) L'employeur qui décide d'établir, aux termes de l'article 19, un ou plusieurs programmes d'équité salariale à l'égard de son établissement, avise de sa décision les agents négociateurs des employés de son établissement, le cas échéant, et affiche un avis de cette décision sur les lieux de travail.

Affichage de
l'avis

(2) Dès que l'employeur affiche l'avis prévu au paragraphe (1), la partie II s'applique à l'établissement visé par l'avis et la présente partie cesse alors de s'appliquer à l'employeur à l'égard de cet établissement.

Cas d'applica-
tion de la
partie II

Transition

21.—(1) Notwithstanding subsection 7 (1) or (2), an employer to whom this Part applies may maintain compensation practices that were in existence in the employer's establishment immediately before the effective date,

- (a) until the fifth anniversary of the effective date, if the employer employs at least fifty but fewer than 100 employees on the effective date; and
- (b) until the sixth anniversary of the effective date, if the employer employs at least ten but fewer than fifty employees on the effective date,

and, until the relevant anniversary date, a compensation change that is the same in percentage terms for female job classes and male job classes in the establishment shall be deemed not to be a contravention of those subsections even though the change is different in dollar terms for a female job class than for a male job class.

Repeal

(2) This Part is repealed on the sixth anniversary of the effective date.

PART IV

Enforcement

Complaints

22.—(1) Any employer, employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

Idem

(2) Any employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining with respect to a pay equity plan that applies to the employee or group of employees that,

- (a) the plan is not being implemented according to its terms; or
- (b) because of changed circumstances in the establishment, the plan is not appropriate for the female job

21 (1) Malgré les paragraphes 7 (1) ou (2), l'employeur auquel s'applique la présente partie peut maintenir les pratiques de rétribution qui avaient cours dans son établissement immédiatement avant la date d'entrée en vigueur :

Disposition
transitoire

- a) jusqu'au cinquième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins cinquante, mais moins de 100 employés à son service à la date d'entrée en vigueur;
- b) jusqu'au sixième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins dix, mais moins de cinquante employés à son service à la date d'entrée en vigueur.

Jusqu'à l'anniversaire pertinent, la modification de la rétribution qui est la même, en termes de pourcentage, à l'égard des catégories d'emplois à prédominance féminine qu'à l'égard des catégories d'emplois à prédominance masculine dans l'établissement, est réputée ne pas contrevenir à ces paragraphes, même si, en termes absolus, la modification qui est faite à l'égard des catégories d'emplois à prédominance féminine diffère de celle qui est faite à l'égard des catégories d'emplois à prédominance masculine.

(2) La présente partie est abrogée le jour du sixième anniversaire de la date d'entrée en vigueur.

Abrogation

PARTIE IV

Exécution de la loi

22 (1) Un employeur, un employé, un groupe d'employés ou, le cas échéant, un agent négociateur qui représente l'employé ou le groupe d'employés, peuvent déposer auprès de la Commission une plainte signalant qu'il y a eu contravention à la présente loi, aux règlements ou à une ordonnance de la Commission.

Plaintes

(2) Un employé, un groupe d'employés ou, le cas échéant, l'agent négociateur qui représente l'employé ou le groupe d'employés, peuvent déposer auprès de la Commission, à l'égard du programme d'équité salariale qui vise cet employé ou ce groupe d'employés, une plainte précisant, selon le cas :

Idem

- a) que la mise en oeuvre du programme ne s'effectue pas conformément à ses modalités;
- b) qu'en raison d'un changement de la situation au sein de l'établissement, le programme ne convient pas à la catégorie d'emplois à prédominance fémi-

class to which the employee or group of employees belongs.

Combining of
complaints

(3) The Hearings Tribunal may combine two or more complaints and deal with them in one proceeding if the complaints,

- (a) are made against the same person and bring into question the same or a similar issue; or
- (b) have questions of law or fact in common.

Investigation
of complaints

23.—(1) Subject to subsection (2), when the Commission receives a complaint, a review officer shall investigate the complaint and may endeavour to effect a settlement.

Idem

(2) The review officer shall notify the parties and the Hearings Tribunal as soon as he or she decides that a settlement cannot be effected and that he or she will not be making an order under subsection 24 (3).

Decision to
not deal with
complaint

(3) A review officer may decide that a complaint should not be considered if the review officer is of the opinion that,

- (a) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (b) the complaint is not within the jurisdiction of the Commission.

Hearing
before
Tribunal

(4) The review officer shall notify the complainant of his or her decision under subsection (3) and the complainant may request a hearing before the Hearings Tribunal with respect to the decision.

Orders by
review
officers

24.—(1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.

Idem

(2) Where a review officer is of the opinion that a pay equity plan is not being implemented according to its terms, the review officer may order the employer to take such steps as are set out in the order to implement the plan.

Idem

(3) Where a review officer is of the opinion that there has been a contravention of subsection 7 (1) or (2), the review officer may order the employer and the bargaining agent, if

nine à laquelle appartiennent l'employé ou le groupe d'employés.

(3) Le Tribunal peut réunir deux ou plusieurs plaintes et en traiter au cours d'une même instance, si ces plaintes, selon le cas :

Réunion de
plaintes

- a) sont formulées contre la même personne et se rapportent au même point en litige ou à un point semblable;
- b) soulèvent les mêmes questions de droit ou de fait.

23 (1) Sous réserve du paragraphe (2), un agent de révision mène une enquête concernant la plainte reçue par la Commission et peut tenter d'amener les parties à accepter un règlement.

Enquêtes au
sujet des
plaintes

(2) Aussitôt que l'agent de révision décide qu'il ne peut pas amener les parties à accepter un règlement et qu'il ne donnera pas d'ordre en vertu du paragraphe 24 (3), il en avise les parties et le Tribunal.

Idem

(3) L'agent de révision peut décider de ne pas examiner la plainte s'il est d'avis que, selon le cas :

Décision de
ne pas traiter
de la plainte

- a) la plainte est futile, frivole, vexatoire ou faite de mauvaise foi;
- b) la plainte n'est pas du ressort de la Commission.

(4) L'agent de révision avise le plaignant de la décision qu'il a prise aux termes du paragraphe (3), et le plaignant peut demander au Tribunal de tenir une audience à l'égard de la décision.

Audience
devant le
Tribunal

24 (1) L'agent de révision qui est d'avis qu'un programme d'équité salariale n'est pas en cours d'élaboration tel que l'exige la partie II peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesures énoncées dans son ordre en vue d'élaborer le programme.

Ordres des
agents de
révision

(2) L'agent de révision qui est d'avis qu'un programme d'équité salariale n'est pas mis en oeuvre conformément à ses modalités peut ordonner à l'employeur de prendre les mesures énoncées dans son ordre aux fins de mettre en oeuvre le programme.

Idem

(3) L'agent de révision qui est d'avis qu'il y a eu contravention aux paragraphes 7 (1) ou (2) peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesu-

Idem

any, to take such steps as are set out in the order to comply with either or both of those subsections.

Idem

(4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 10.

Reference to
Tribunal

(5) Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the Hearings Tribunal.

Hearing
before
Tribunal

(6) An employer or bargaining agent named in an order under this section may request a hearing before the Hearings Tribunal with respect to the order, and, where the order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing.

Hearings

25.—(1) The Hearings Tribunal shall hold a hearing,

- (a) if a review officer is unable to effect a settlement of a complaint and has not made an order under subsection 24 (3);
- (b) if a request for a hearing, as described in subsection 23 (4) or 24 (6), is received by the Hearings Tribunal; or
- (c) if a review officer refers a matter to the Hearings Tribunal under subsection 24 (5).

Orders

(2) The Hearings Tribunal shall decide the issue that is before it for a hearing and, without restricting the generality of the foregoing, the Hearings Tribunal,

- (a) where it finds that an employer or a bargaining agent has failed to comply with Part II, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan;
- (b) where it finds that an employer has contravened subsection 9 (2) by dismissing, suspending or otherwise penalizing an employee, may order the employer to reinstate the employee, restore the employee's compensation to the same level as before the contravention and pay the employee the

res énoncées dans son ordre aux fins de se conformer à l'un ou l'autre de ces paragraphes ou aux deux.

(4) Un ordre donné aux termes du paragraphe (1) peut prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 10. Idem

(5) Si l'employeur ou l'agent négociateur ne se conforment pas à l'ordre donné aux termes du présent article, un agent de révision peut renvoyer la question au Tribunal. Renvoi
devant le
Tribunal

(6) Un employeur ou un agent négociateur nommés dans un ordre donné aux termes du présent article peuvent demander au Tribunal de tenir une audience à cet égard. Si l'ordre a été donné à la suite d'une plainte et que la plainte n'a pas fait l'objet d'un règlement, le plaignant peut également demander une audience. Audience
devant le
Tribunal

25 (1) Le Tribunal tient une audience dans les cas suivants : Audiences

- a) si l'agent de révision ne peut amener les parties à accepter un règlement relativement à la plainte et qu'il n'a pas donné d'ordre en vertu du paragraphe 24 (3);
- b) si le Tribunal reçoit une demande d'audience prévue aux paragraphes 23 (4) ou 24 (6);
- c) si l'agent de révision renvoie une question devant le Tribunal aux termes du paragraphe 24 (5).

(2) Le Tribunal règle la question dont il est saisi, et peut notamment : Ordonnances

- a) enjoindre à l'agent de révision d'élaborer un programme d'équité salariale destiné à l'établissement de l'employeur, lorsqu'il constate que ce dernier ou l'agent négociateur ne se sont pas conformés à la partie II. Il peut aussi enjoindre à l'employeur et à l'agent négociateur, le cas échéant, ou à l'un d'eux, d'acquitter la totalité des frais d'élaboration du programme;
- b) lorsqu'elle constate que l'employeur a enfreint le paragraphe 9 (2) en pénalisant un employé, notamment en le renvoyant ou en le suspendant, peut ordonner à l'employeur de réintégrer l'employé dans son emploi, de placer sa rétribution au même niveau qu'avant la contravention et de lui verser le

amount of all compensation lost because of the contravention;

- (c) where it finds that an employer has contravened subsection 9 (1) by reducing compensation, may order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction;
- (d) may confirm, vary or revoke orders of review officers;
- (e) may, for the female job class that is the subject of the complaint or reference, order adjustments in compensation in order to achieve pay equity, where the Hearings Tribunal finds that there has been a contravention of subsection 7 (1);
- (f) may order that the pay equity plan be revised in such manner as the Hearings Tribunal considers appropriate, where it finds that the plan is not appropriate for the female job class that is the subject of the complaint or reference because there has been a change of circumstances in the establishment; and
- (g) may order a party to a proceeding to take such action or refrain from such action as in the opinion of the Hearings Tribunal is required in the circumstances.

Idem

(3) An order under clause (2) (a) may provide that a review officer may retain the services of such experts as the review officer considers necessary to prepare a pay equity plan.

Application
of Part II

(4) Part II, except section 16, applies with necessary modifications to a pay equity plan prepared under clause (2) (a) but,

- (a) the order of the Hearings Tribunal may provide for a mandatory posting date that is later than the one provided in section 10;
- (b) the order of the Hearings Tribunal shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 13 (2) (e);

montant entier de la rétribution perdue en raison de la contravention;

- c) lorsqu'il constate que l'employeur a enfreint le paragraphe 9 (1) en diminuant la rétribution, ordonner à l'employeur de rajuster la rétribution de tous les employés concernés au taux auquel ils auraient eu droit n'eût été la diminution, et de verser une rétribution égale au montant perdu en raison de la diminution;
- d) confirmer, modifier ou révoquer les ordres des agents de révision;
- e) ordonner, à l'égard de la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi, que des rajustements de la rétribution soient effectués pour atteindre l'équité salariale, lorsqu'il constate qu'il y a eu contravention au paragraphe 7 (1);
- f) ordonner que le programme d'équité salariale soit révisé de la manière que le Tribunal estime appropriée lorsqu'il constate que le programme ne convient pas à la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi en raison d'un changement de la situation au sein de l'établissement;
- g) enjoindre à une partie à l'instance soit de prendre certaines mesures, soit de s'en abstenir, selon ce que le Tribunal juge nécessaire dans les circonstances.

(3) L'ordonnance prise en vertu de l'alinéa (2) a) peut permettre à l'agent de révision de retenir les services des experts que celui-ci estime nécessaires en vue d'élaborer un programme d'équité salariale. Idem

(4) À l'exception de l'article 16, la partie II s'applique avec les adaptations nécessaires au programme d'équité salariale élaboré en vertu de l'alinéa (2) a). Toutefois : Cas d'application de la partie II

- a) l'ordonnance prise par le Tribunal peut prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 10;
- b) l'ordonnance du Tribunal ne prévoit pas une date de rajustement de la rétribution différente de la date pertinente énoncée à l'alinéa 13 (2) e);

- (c) the review officer shall perform the duties of the employer and the bargaining agent, if any;
- (d) when the review officer posts the plan in the work place as subsection 14 (4) or 15 (6) provides, the employer, the bargaining agent (if the plan relates to a bargaining unit), or any employee or group of employees to whom the plan applies (if the plan does not relate to a bargaining unit) may file an objection with the Hearings Tribunal; and
- (e) an objection under clause (d) shall be dealt with by the Hearings Tribunal under section 17.

Retroactive
compensation
adjustments

(5) An order under clause (2) (e) may be retroactive to the day of the contravention of subsection 7 (1).

Idem

(6) An order under clause (2) (f) may provide that adjustments in compensation resulting from the revision of the pay equity plan be made retroactive to the day of the change in circumstances that gave rise to the order.

Offences and
penalties

26.—(1) Every person who contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, in the case of an individual, and not more than \$25,000, in any other case.

Parties

(2) If a corporation or bargaining agent contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted.

Prosecution
against
bargaining
agent

(3) A prosecution for an offence under this Act may be instituted against a bargaining agent in its own name.

Consent

(4) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Hearings Tribunal.

- c) l'agent de révision exerce les fonctions de l'employeur et de l'agent négociateur, le cas échéant;
- d) lorsque l'agent de révision affiche le programme sur les lieux de travail comme le prévoient les paragraphes 14 (4) ou 15 (6), l'employeur, l'agent négociateur (si le programme est relié à une unité de négociation) ou un employé ou un groupe d'employés visés par le programme (si le programme n'est pas relié à une unité de négociation) peuvent déposer une opposition auprès du Tribunal;
- e) le Tribunal traite de l'opposition visée à l'alinéa d) aux termes de l'article 17.

(5) L'ordonnance prise aux termes de l'alinéa (2) e) peut avoir un effet rétroactif au jour de la contravention au paragraphe 7 (1). Rajustements rétroactifs de la rétribution

(6) L'ordonnance prise aux termes de l'alinéa (2) f) peut prévoir que les rajustements de la rétribution résultant de la révision du programme d'équité salariale ont un effet rétroactif au jour où s'est produit le changement de situation qui a donné lieu à l'ordonnance. Idem

26 (1) Quiconque contrevient aux paragraphes 9 (2) ou 35 (5) ou à une ordonnance du Tribunal ou ne s'y conforme pas, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 \$ dans le cas d'une personne physique, et d'au plus 25 000 \$ dans les autres cas. Infractions et peines

(2) Si une personne morale ou un agent négociateur contreviennent aux paragraphes 9 (2) ou 35 (5) ou à une ordonnance du Tribunal ou ne s'y conforment pas, le dirigeant, l'employé ou le mandataire qui autorise ou permet la contravention ou y donne son consentement est partie à l'infraction, en est coupable et, sur déclaration de culpabilité, est passible de la peine prévue pour cette infraction, que la personne morale ou l'agent négociateur aient été ou non poursuivis ou déclarés coupables de l'infraction. Parties

(3) Une poursuite relative à une infraction à la présente loi peut être intentée contre l'agent négociateur en tant que tel. Poursuite contre l'agent négociateur

(4) Il ne peut être intenté aucune poursuite relative à une infraction à la présente loi sans le consentement écrit du Tribunal. Consentement

PART V

Administration

Commission
established

27.—(1) There is hereby established a commission to be known as the Pay Equity Commission of Ontario.

Idem

(2) The Commission shall consist of the Pay Equity Hearings Tribunal and the Pay Equity Office.

Staff

(3) Such employees as are necessary for the proper conduct of the Commission's work may be appointed under the *Public Service Act* to serve in the Pay Equity Office.

R.S.O. 1980,
c. 418

Services of
ministries,
etc.

(4) The Commission shall, if appropriate, use the services and facilities of a ministry, board, commission or agency of the Government of Ontario.

Hearings
Tribunal

28.—(1) The Hearings Tribunal shall be composed of a presiding officer, one or more deputy presiding officers and as many other members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

Alternate
presiding
officer

(2) The Lieutenant Governor in Council shall designate one of the deputy presiding officers to be alternate presiding officer and the person so designated, in the absence of the presiding officer or if the presiding officer is unable to act, shall have all of the powers of the presiding officer.

Remuneration
and expenses

(3) The members of the Hearings Tribunal who are not Crown employees shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

Resignation
of member

(4) Where a member of the Hearings Tribunal resigns, he or she may carry out and complete any duties or responsibilities and exercise any powers that he or she would have had if he or she had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he or she participated as a member of the Hearings Tribunal.

Powers and
duties of
Tribunal

29.—(1) The Hearings Tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by this Act or the regulations.

PARTIE V

Application de la loi

27 (1) Est créée une commission nommée Commission de l'équité salariale de l'Ontario.

Création de la Commission

(2) La Commission se compose du Tribunal de l'équité salariale et du Bureau de l'équité salariale.

Idem

(3) Les employés nécessaires à la conduite efficace des activités de la Commission peuvent être nommés aux termes de la *Loi sur la fonction publique* afin de travailler au Bureau de l'équité salariale.

Personnel

L.R.O. 1980, chap. 418

(4) La Commission se prévaut, si cela est approprié, des services et installations des ministères, commissions ou organismes du gouvernement de l'Ontario.

Services des ministères, etc.

28 (1) Le Tribunal se compose d'un président, d'un ou de plusieurs vice-présidents, et du nombre d'autres membres répartis en un nombre égal de représentants des employeurs et des employés que le lieutenant-gouverneur en conseil juge approprié. Toutes ces personnes sont nommées par le lieutenant-gouverneur en conseil.

Tribunal

(2) Le lieutenant-gouverneur en conseil désigne l'un des vice-présidents comme président suppléant. Cette personne possède tous les pouvoirs du président si ce dernier est absent ou empêché d'agir.

Président suppléant

(3) Les membres du Tribunal qui ne sont pas des employés de la Couronne reçoivent la rémunération que peut fixer le lieutenant-gouverneur en conseil, et, sous réserve de l'approbation du Conseil de gestion du gouvernement, les frais normaux engagés lors de l'exercice de leurs fonctions aux termes de la présente loi.

Rémunération et frais

(4) Le membre du Tribunal qui démissionne peut toutefois exercer les attributions qu'il aurait continué d'avoir s'il n'avait pas démissionné, en ce qui concerne toute question faisant l'objet d'une instance à laquelle il a participé en tant que membre.

Démission d'un membre

29 (1) Le Tribunal peut exercer les pouvoirs et doit accomplir les obligations qui lui sont conférés par la présente loi ou par les règlements.

Attributions du Tribunal

Idem

(2) Without limiting the generality of subsection (1), the Hearings Tribunal,

- (a) may decide in an order made under subsection 17 (1) or clause 25 (2) (a) that any job class is a female job class or a male job class;
- (b) may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it; and
- (c) may require that any person seeking a determination of any matter by the Hearings Tribunal shall give written notice, in such form and manner as the Hearings Tribunal specifies, to the persons that the Hearings Tribunal specifies.

Panels

(3) The presiding officer may establish panels of the Hearings Tribunal and it may sit in two or more panels simultaneously so long as a quorum of the Hearings Tribunal is present on each panel.

Quorum

(4) The presiding officer or a deputy presiding officer, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Hearings Tribunal.

Decisions

(5) The decision of the majority of the members of the Hearings Tribunal present and constituting a quorum is the decision of the Hearings Tribunal, but, if there is no majority, the decision of the presiding officer or deputy presiding officer governs.

Exclusive jurisdiction

30.—(1) The Hearings Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Hearings Tribunal thereon is final and conclusive for all purposes.

Reconsideration of decisions, etc.

(2) The Hearings Tribunal may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order.

Testimony in civil proceedings

31. Except with the consent of the Hearings Tribunal, no member of the Hearings Tribunal, employee of the Commission or person whose services have been contracted for by the Commission shall be required to testify in any civil proceeding, in any proceeding before the Hearings Tribunal or in any proceeding before any other tribunal respecting information

(2) Le Tribunal possède notamment les attributions Idem suivantes :

- a) il peut décider, au moyen d'une ordonnance prise aux termes du paragraphe 17 (1) ou de l'alinéa 25 (2) a), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;
- b) il peut établir des règles concernant la conduite et la gestion de ses affaires, ainsi que des règles de pratique et de procédure à suivre relativement aux questions dont il est saisi;
- c) il peut exiger que la personne qui lui demande de prendre une décision relative à une question quelconque en avise par écrit, de la manière que précise le Tribunal, les personnes qu'il précise.

(3) Le président peut former des comités du Tribunal, qui peut ainsi siéger simultanément en plusieurs comités, pourvu que le quorum du Tribunal soit atteint dans chacun d'eux. Comités

(4) Le président ou un vice-président, un membre représentant les employeurs et un membre représentant les employés constituent le quorum et peuvent exercer tous les pouvoirs du Tribunal. Quorum

(5) La décision de la majorité des membres du Tribunal présents qui constituent le quorum est la décision du Tribunal. En cas de partage, le président ou le vice-président a voix prépondérante. Décisions

30 (1) Le Tribunal a compétence exclusive pour exercer les pouvoirs que lui confère la présente loi et trancher les questions de fait ou de droit soulevées à l'occasion d'une question dont il est saisi. Ses décisions et les mesures qu'il prend sont définitives et ont à toutes fins force de chose jugée. Compétence exclusive

(2) Le Tribunal peut, chaque fois qu'il le juge à propos, examiner de nouveau, modifier ou annuler ses propres décisions et ordonnances. Nouvel examen des décisions et ordonnances

31 Sauf si le Tribunal y consent, ses membres, les employés de la Commission et les personnes dont elle a retenu les services par contrat ne peuvent pas être contraints à témoigner lors d'une instance civile ou devant le Tribunal ou tout autre tribunal administratif, en ce qui concerne les rensei- Témoignages lors d'instances civiles

obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

Parties to
proceedings

32.—(1) Where a hearing is held before the Hearings Tribunal or where a review officer investigates for the purposes of effecting a settlement of an objection or complaint, the parties to the proceeding are,

- (a) the employer;
- (b) the objector or complainant; and
- (c) the bargaining agent (if the pay equity plan relates to a bargaining unit) or the employees to whom the plan relates (if the plan does not relate to a bargaining unit).

Notice

(2) Where the Hearings Tribunal or a review officer requires that a notice be given by the employer to employees, the employer shall post the notice in the work place and such notice shall be deemed to have been sufficiently given to all employees in the work place when it is so posted.

Represent-
ation

(3) An employee or a group of employees may appoint any person or organization to act as the agent of the employee or group of employees before the Hearings Tribunal or before a review officer.

Idem

(4) Where an employee or group of employees advises the Hearings Tribunal in writing that the employee or group of employees wishes to remain anonymous, the agent of the employee or group of employees shall be the party to the proceeding before the Hearings Tribunal or review officer and not the employee or group of employees.

Idem

(5) Where subsection (4) applies, the agent, in the agent's name, may take all actions that an employee may take under this Act including the filing of objections under Part II and the filing of complaints under Part IV.

Pay Equity
Office

33.—(1) The Pay Equity Office is responsible for the enforcement of this Act and orders of the Hearings Tribunal.

Idem

(2) Without limiting the generality of subsection (1), the Pay Equity Office,

- (a) may conduct research and produce papers concerning any aspect of pay equity and related subjects and make recommendations to the Minister in connection therewith;

gnements obtenus dans l'accomplissement de leurs devoirs ou dans le cadre de leurs fonctions aux termes de la présente loi.

32 (1) Lorsque le Tribunal tient une audience ou qu'un agent de révision mène une enquête en vue d'amener les parties à accepter un règlement relativement à une opposition ou à une plainte, les parties à l'instance sont les suivantes :

Parties à l'instance

- a) l'employeur;
- b) l'opposant ou le plaignant;
- c) l'agent négociateur (si le programme d'équité salariale est relié à une unité de négociation) ou les employés visés par le programme (si celui-ci n'est pas relié à une unité de négociation).

(2) Lorsque le Tribunal ou l'agent de révision exige que l'employeur donne un avis à ses employés, celui-ci affiche l'avis sur les lieux de travail, et l'avis ainsi affiché est réputé suffisant à l'égard de tous les employés du lieu de travail.

Avis

(3) Un employé ou un groupe d'employés peuvent désigner une personne ou une organisation comme leur mandataire devant le Tribunal ou l'agent de révision.

Représentation

(4) Lorsqu'un employé ou un groupe d'employés avisent par écrit le Tribunal de leur désir de garder l'anonymat, leur mandataire devient à leur place la partie à l'instance devant le Tribunal ou l'agent de révision.

Idem

(5) Lorsque le paragraphe (4) s'applique, le mandataire peut, en son nom, prendre toutes les mesures qu'un employé peut prendre aux termes de la présente loi. Il peut notamment déposer une opposition en vertu de la partie II et déposer une plainte en vertu de la partie IV.

Idem

33 (1) Le Bureau de l'équité salariale est chargé de l'exécution de la présente loi et des ordonnances du Tribunal.

Bureau de l'équité salariale

(2) Le Bureau de l'équité salariale possède notamment les attributions suivantes :

Idem

- a) il peut effectuer des recherches et préparer des rapports concernant n'importe quel aspect de l'équité salariale et des questions connexes et peut également formuler des recommandations au ministre en ce qui concerne l'objet de ces recherches ou rapports;

- (b) may conduct public education programs and provide information concerning any aspect of pay equity and related subjects;
- (c) shall provide support services to the Hearings Tribunal;
- (d) shall conduct such studies as the Minister requires and make reports and recommendations in relation thereto; and
- (e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been predominantly female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the Minister in relation to redressing such discrimination.

Chief
adminis-
trative
officer

(3) The Lieutenant Governor in Council shall appoint a person to be the head of the Pay Equity Office and that person shall be the chief administrative officer of the Commission.

Minister
may require
studies, etc.

(4) The Minister may require the Pay Equity Office to conduct such studies related to pay equity as are set out in a request to the head of the Office and to make reports and recommendations in relation thereto.

Annual
report

(5) Not later than the 31st day of March in each year, the head of the Pay Equity Office shall make an annual report to the Minister on the activities and affairs of the Commission and the Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Review
officers,
designation

34.—(1) The head of the Pay Equity Office shall designate one or more employees of the Office to be review officers.

Review
officers,
duties

(2) Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal.

- b) il peut instituer à l'intention du public des programmes d'information concernant n'importe quel aspect de l'équité salariale et des questions connexes;
- c) il fournit des services d'appoint au Tribunal;
- d) il mène les études qu'exige le ministre et prépare des rapports et formule des recommandations en ce qui concerne l'objet de ces études;
- e) il mène une étude au sujet de la discrimination systémique entre les sexes en ce qui concerne la rétribution du travail effectué, dans les secteurs de l'économie où la main-d'oeuvre est traditionnellement à prédominance féminine, par des catégories d'emplois à prédominance féminine dans les établissements qui n'ont pas de catégories d'emplois à prédominance masculine appropriées aux fins d'établir la comparaison visée à l'article 5; dans l'année qui suit la date d'entrée en vigueur, il prépare des rapports et formule des recommandations à l'intention du ministre en vue d'éliminer cette discrimination.

(3) Le lieutenant-gouverneur en conseil nomme une personne à la direction du Bureau de l'équité salariale. Cette personne est le responsable de l'administration de la Commission.

Responsable
de l'adminis-
tration

(4) Le ministre peut exiger que le Bureau de l'équité salariale mène les études liées à l'équité salariale que précise une demande qu'il adresse au dirigeant du Bureau. Il peut également exiger que le Bureau prépare des rapports et formule des recommandations en ce qui concerne l'objet de ces études.

Études exi-
gées par le
ministre

(5) Le dirigeant du Bureau de l'équité salariale présente au ministre, au plus tard le 31 mars de chaque année, un rapport annuel sur les activités et affaires de la Commission. Le ministre le dépose devant l'Assemblée si elle siège, sinon il le fait à la session suivante.

Rapport
annuel

34 (1) Le dirigeant du Bureau de l'équité salariale désigne un ou plusieurs employés du Bureau comme agents de révision.

Désignation
des agents
de révision

(2) Il incombe aux agents de révision de contrôler l'élaboration et la mise en oeuvre des programmes d'équité salariale et de mener des enquêtes au sujet des oppositions et des plaintes qui ont été déposées auprès de la Commission. Ils peuvent tenter d'amener les parties à accepter un règlement.

Fonctions
des agents
de révision

Powers

(3) A review officer, for the purpose of carrying out his or her duties,

- (a) may enter any place at any reasonable time;
- (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;
- (d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and
- (e) may provide in an order made under subsection 16 (2) or 24 (1) that any job class is a female job class or a male job class.

Non-application of R.S.O. 1980, c. 484

(4) The *Statutory Powers Procedure Act* does not apply to a review officer and he or she is not required to hold a hearing before making an order authorized by this Act.

Entry to dwellings

35.—(1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of a review officer's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the review officer named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Il leur incombe de prendre toute autre mesure prévue par la présente loi ou par une ordonnance du Tribunal.

(3) Dans l'exercice de ses fonctions, l'agent de révision Pouvoirs
peut :

- a) à une heure raisonnable, pénétrer dans un endroit quelconque;
- b) exiger la production, à des fins d'inspection, de documents ou d'objets qui peuvent être reliés à l'exercice de ses fonctions;
- c) après avoir donné un récépissé à cet effet, enlever de quelque endroit où ils se trouvent, les documents ou les objets produits à la suite de la demande formulée en vertu de l'alinéa b), aux fins d'en tirer des copies ou des extraits, après quoi ils sont promptement retournés à la personne qui les a produits;
- d) interroger quiconque sur des questions qui sont ou peuvent être reliées à l'exercice de ses fonctions, sous réserve du droit de cette personne à la présence d'un avocat ou d'un autre représentant lors de l'interrogatoire;
- e) stipuler, dans un ordre donné aux termes des paragraphes 16 (2) ou 24 (1), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(4) La *Loi sur l'exercice des compétences légales* ne s'applique pas à un agent de révision, et celui-ci n'est pas obligé de tenir une audience avant de donner un ordre autorisé par la présente loi.

Non-application
du chap. 484
des L.R.O.
de 1980

35 (1) Le pouvoir accordé par la présente loi de pénétrer dans un endroit qui sert de logement, ne peut être exercé sans la permission de l'occupant, sauf en vertu d'un mandat délivré aux termes du présent article.

Accès à un
logement

(2) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il se trouve dans un endroit quelconque des documents ou des objets qu'on peut raisonnablement croire susceptibles de fournir des preuves à l'agent de révision dans l'exercice de ses fonctions aux termes de la présente loi, peut délivrer un mandat de perquisition rédigé selon la formule prescrite. Le mandat autorise l'agent de révision qui y est nommé à perquisitionner à cet endroit en vue d'en enlever les pièces précitées pour en tirer des copies ou des

Mandat de
perquisition

Warrant for
entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a review officer may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the review officer named in the warrant.

Execution
and
expiry of
warrant

(4) A warrant issued under this section,

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(5) No person shall hinder, obstruct or interfere with a review officer in the execution of a warrant or otherwise impede a review officer in carrying out his or her duties under this Act.

Idem

(6) Subsection (5) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (2).

Admissibility
of copies

(7) Copies of, or extracts from, documents and things removed from premises under this Act and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

PART VI

Regulations and Miscellaneous

Regulations

36. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and notices and providing for their use;
- (b) prescribing methods for determining the historical incumbency of a job class;
- (c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class;

extraits, après quoi elles sont promptement retournées à cet endroit.

(3) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment, qu'il existe des motifs raisonnables de croire qu'il est nécessaire qu'un agent de révision, dans l'exercice de ses fonctions en vertu de la présente loi, pénètre dans un endroit qui sert de logement ou dont l'accès a été refusé, peut délivrer un mandat rédigé selon la formule prescrite, autorisant l'agent de révision qui y est nommé à pénétrer dans cet endroit.

Mandat pour pénétrer dans un endroit

(4) Le mandat délivré aux termes du présent article :

Exécution et caducité du mandat

- a) précise les jours et les heures pendant lesquels il peut être exécuté;
- b) porte une date de caducité qui ne peut être postérieure à quinze jours de sa délivrance.

(5) Nul ne doit entraver ni gêner un agent de révision dans l'exécution d'un mandat ni d'une autre façon l'empêcher d'exercer ses fonctions aux termes de la présente loi.

Interdiction d'entraver

(6) Sauf si un mandat a été délivré aux termes du paragraphe (2), le paragraphe (5) n'est pas enfreint par le refus d'une personne de produire des documents ou des objets.

Idem

(7) Les copies ou extraits qu'une personne a tirés des documents et des objets qui ont été enlevés d'un endroit aux termes de la présente loi et que cette personne certifie être conformes aux originaux, sont admissibles en preuve dans la même mesure et ont la même valeur probante que les documents ou les objets dont ils sont tirés.

Admissibilité des copies

PARTIE VI

Règlements et dispositions diverses

36 Le lieutenant-gouverneur en conseil peut, par règlement :

Règlements

- a) prescrire des formules et des avis, et prévoir les modalités de leur emploi;
- b) prescrire les méthodes à utiliser pour déterminer le sexe des personnes qui occupent traditionnellement les postes d'une catégorie d'emplois;
- c) prescrire des critères dont il est tenu compte aux fins de déterminer si une catégorie d'emplois est

- (d) prescribing the method of valuing any form of compensation;
- (e) prescribing criteria that shall be taken into account in determining whether work performed in two job classes is of equal or comparable value;
- (f) prescribing criteria that shall be taken into account in deciding whether or not a difference in compensation between a female job class and a male job class is a difference that is permitted by subsection 8 (1) or (2);
- (g) permitting the Hearings Tribunal, on the application of an employer and in accordance with such criteria as may be prescribed in the regulations, to change the mandatory posting date and the dates for adjustments in compensation to dates later than those set out in Part II and to vary the minimum adjustments in compensation required by that Part, subject to such conditions as the Hearings Tribunal may impose in its order granting the application;
- (h) adding to the Appendix to the Schedule any person or class of persons or any agency, authority, board, commission, corporation or organization of any kind and providing that the mandatory posting date for an entity so added shall be such date as is set out in the regulations.

Review of
Act

37.—(1) Seven years after the effective date, the Lieutenant Governor in Council shall appoint a person who shall undertake a comprehensive review of this Act and its operation.

Report to
Minister

(2) The person appointed under subsection (1) shall prepare a report on his or her findings and shall submit the report to the Minister.

Idem

(3) The Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Moneys

38. The moneys required for the purposes of this Act by the Crown in right of Ontario shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;

- d) prescrire la méthode à utiliser pour déterminer la valeur de toute forme de rétribution;
- e) prescrire des critères dont il est tenu compte aux fins de déterminer si le travail effectué dans deux catégories d'emplois est de valeur égale ou comparable;
- f) prescrire des critères dont il est tenu compte aux fins de déterminer si un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine est un écart permis par les paragraphes 8 (1) ou (2);
- g) permettre au Tribunal, à la demande d'un employeur et conformément aux critères qui peuvent être prescrits dans les règlements, de reporter la date d'affichage obligatoire et les dates des rajustements de la rétribution à des dates postérieures à celles que prévoit la partie II, ainsi que de modifier les rajustements minimaux de la rétribution exigés par cette partie, aux conditions que le Tribunal peut imposer dans l'ordonnance par laquelle il consent à la demande;
- h) ajouter à l'appendice de l'annexe une personne, une catégorie de personnes ou un organisme, un office, un conseil, une commission, une personne morale ou une organisation quelconque, et prévoir que la date d'affichage obligatoire de ces derniers est celle qui figure aux règlements.

37 (1) Sept ans après la date d'entrée en vigueur, le lieutenant-gouverneur en conseil nomme une personne qui procède à l'examen global de la présente loi et des modalités de son application.

Examen de la loi

(2) La personne nommée aux termes du paragraphe (1) rédige un rapport qui énonce ses conclusions et le présente au ministre.

Rapport au ministre

(3) Le ministre dépose le rapport devant l'Assemblée si elle siège, sinon il le fait à la session suivante.

Idem

38 Les sommes d'argent nécessaires à la Couronne du chef de l'Ontario pour l'application de la présente loi sont prélevées, jusqu'au 31 mars 1988, sur le Fonds du revenu conso-

Sommes d'argent

- Crown bound **39.** This Act binds the Crown in right of Ontario.
- Commence-
ment **40.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Short title **41.** The short title of this Act is the *Pay Equity Act, 1987*.

SCHEDULE

1. The public sector in Ontario consists of,

- (a) the Crown in right of Ontario, every agency thereof, and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
- (b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;
- (c) every board as defined in the *Education Act*, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;
- (d) every hospital listed in the Schedule to Regulation 863 of Revised Regulations of Ontario, 1980 made under the *Public Hospitals Act*, every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*, every hospital established or approved by the Lieutenant Governor in Council as a community psychiatric hospital under the *Community Psychiatric Hospitals Act* and every sanitarium licensed by the Lieutenant Governor in Council under the *Private Sanitaria Act*;
- (e) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (g) every board of health under the *Health Promotion and Protection Act, 1983*, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;

lidé. Après cette date, ces sommes sont prélevées sur les sommes affectées à cette fin par la Législature.

39 La présente loi lie la Couronne du chef de l'Ontario.

La Couronne
est liée

40 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en
vigueur

41 Le titre abrégé de la présente loi est *Loi de 1987 sur l'équité salariale*.

Titre abrégé

ANNEXE

1 Le secteur public en Ontario se compose des éléments suivants :

a) la Couronne du chef de l'Ontario, les organismes qui en relèvent, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont la majorité des administrateurs, des membres ou des dirigeants sont nommés ou choisis par le lieutenant-gouverneur en conseil ou par un membre du Conseil des ministres ou avec leur approbation;

b) les municipalités de l'Ontario, les conseils locaux au sens de la *Loi sur les affaires municipales*, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont les membres ou les dirigeants sont nommés ou choisis par le conseil d'une municipalité de l'Ontario ou avec son approbation;

L.R.O. 1980,
chap. 303

c) les conseils au sens de la *Loi sur l'éducation*, ainsi que les collèges, les universités et les établissements d'enseignement postsecondaire de l'Ontario qui reçoivent la majeure partie de leur capital ou de leurs fonds annuels de fonctionnement de la Couronne;

L.R.O. 1980,
chap. 129

d) les hôpitaux dont le nom figure à l'annexe du Règlement 863 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur les hôpitaux publics*, les hôpitaux privés exploités aux termes d'un permis délivré en vertu de la *Loi sur les hôpitaux privés*, les hôpitaux établis ou agréés par le lieutenant-gouverneur en conseil à titre d'hôpitaux psychiatriques communautaires en vertu de la *Loi sur les hôpitaux psychiatriques communautaires*, ainsi que les maisons de santé titulaires d'un permis délivré par le lieutenant-gouverneur en conseil en vertu de la *Loi sur les maisons de santé*;

L.R.O. 1980,
chap. 410,
389, 79, 391

e) les personnes morales disposant d'un capital-actions dont au moins 90 pour cent des actions émises sont détenues à titre bénéficiaire par un ou plusieurs employeurs visés aux alinéas a) à d) ou pour le compte de ceux-ci, ainsi que les filiales en propriété exclusive de ces personnes morales;

f) les personnes morales sans capital-actions dont la majorité des membres ou des dirigeants sont nommés ou choisis par un ou plusieurs des employeurs visés aux alinéas a) à d) ou avec leur approbation, ou en sont membres, ainsi que les filiales en propriété exclusive de ces personnes morales;

g) les conseils de santé aux termes de la *Loi de 1983 sur la protection et la promotion de la santé*, ainsi que les conseils de santé aux termes d'une loi de la Législature qui crée ou maintient une municipalité régionale;

1983,
chap. 10

- (h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Provincial Auditor; and
- (i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

2. For the purposes of this Schedule, "municipality" includes a metropolitan, regional or district municipality and the County of Oxford.

APPENDIX

MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation.

MINISTRY OF CITIZENSHIP AND CULTURE

1. The Art Gallery of Ontario.
2. CJRT-FM Inc.
3. Royal Botanical Gardens.

MINISTRY OF COLLEGES AND UNIVERSITIES

1. Algoma College.
2. Assumption University.
3. Brescia College.
4. Canterbury College.
5. Collège dominicain de philosophie et de théologie.
6. Concordia Lutheran Seminary.
7. Conrad Grebel College.
8. Hearst College.
9. Holy Redeemer College.
10. Huntington University.
11. Huron College.
12. Iona College.
13. King's College.
14. Knox College.
15. L'Université de Sudbury.
16. McMaster Divinity College.

h) le Bureau du lieutenant-gouverneur de l'Ontario et celui de l'Assemblée, les membres de l'Assemblée, le Bureau de l'ombudsman et celui du vérificateur provincial;

i) les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes et les catégories de ceux-ci qui figurent dans l'appendice à la présente annexe ou qui sont ajoutés à l'appendice au moyen de règlements pris en application de la présente loi.

2 Pour l'application de la présente annexe, le terme «municipalité» s'entend en outre d'une municipalité régionale, de district ou de communauté urbaine, ainsi que du comté d'Oxford.

APPENDICE

MINISTÈRE DE L'AGRICULTURE ET DE L'ALIMENTATION

1. Ontario Dairy Herd Improvement Corporation.

MINISTÈRE DES AFFAIRES CIVIQUES ET CULTURELLES

1. Musée des beaux-arts de l'Ontario.
2. CJRT-FM Inc.
3. Royal Botanical Gardens.

MINISTÈRE DES COLLÈGES ET UNIVERSITÉS

1. Algoma College.
2. Assumption University.
3. Brescia College.
4. Canterbury College.
5. Collège dominicain de philosophie et de théologie.
6. Concordia Lutheran Seminary.
7. Conrad Grebel College.
8. Collège de Hearst.
9. Holy Redeemer College.
10. Huntington University.
11. Huron College.
12. Iona College.
13. King's College.
14. Knox College.
15. L'Université de Sudbury.
16. McMaster Divinity College.

17. Nipissing College.
18. Queen's Theological College.
19. Regis College.
20. Renison College.
21. St. Augustine's Seminary.
22. St. Paul's United College.
23. St. Paul University.
24. St. Peter's Seminary.
25. The University of St. Jerome's College.
26. The University of St. Michael's College.
27. Thorneloe University.
28. Trinity College.
29. Victoria University.
30. Waterloo Lutheran Seminary.
31. Wycliffe College.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) children's residences operating under the *Child and Family Services Act, 1984* (c. 55);
- (b) homes for the aged operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203);
- (c) counselling services and staff training purchased by municipalities under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188);
- (d) counselling services purchased by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
- (e) hostels providing services purchased by municipalities under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188);
- (f) work activity projects under the *General Welfare Assistance Act* (R.S.O. 1980, c. 188) purchased by municipalities or the Ministry of Community and Social Services;

17. Nipissing College.
18. Queen's Theological College.
19. Regis College.
20. Renison College.
21. St. Augustine's Seminary.
22. St. Paul's United College.
23. Université Saint-Paul.
24. St. Peter's Seminary.
25. The University of St. Jerome's College.
26. The University of St. Michael's College.
27. Thorneloe University.
28. Trinity College.
29. Victoria University.
30. Waterloo Lutheran Seminary.
31. Wycliffe College.

MINISTÈRE DES SERVICES SOCIAUX ET COMMUNAUTAIRES

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) les foyers pour enfants qui fonctionnent en vertu de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55);
- b) les foyers pour personnes âgées qui fonctionnent en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203);
- c) les services de consultation et de formation du personnel qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188);
- d) les services de consultation qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- e) les centres d'accueil qui fournissent des services qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188);
- f) des programmes d'adaptation au travail en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188) qui sont achetés par des municipalités ou par le ministère des Services sociaux et communautaires;

- (g) support services to the physically handicapped purchased by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (h) vocational rehabilitation services funded by the Ministry of Community and Social Services under the *Vocational Rehabilitation Services Act* (R.S.O. 1980, c. 525);
 - (i) satellite homes operating or funded under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203);
 - (j) nursing services purchased or funded under the *Homemakers and Nurses Services Act* (R.S.O. 1980, c. 200);
 - (k) workshops under the *Vocational Rehabilitation Services Act* (R.S.O. 1980, c. 525);
 - (l) services funded under the *Developmental Services Act* (R.S.O. 1980, c. 118);
 - (m) homes for retarded persons and auxiliary residences under the *Homes for Retarded Persons Act* (R.S.O. 1980, c. 201);
 - (n) day nurseries operated by corporations or municipalities under the *Day Nurseries Act* (R.S.O. 1980, c. 111) receiving direct subsidies from the Ministry of Community and Social Services;
 - (o) day nurseries and private home day-care agencies providing services and funded under agreements with municipalities under the *Day Nurseries Act* (R.S.O. 1980, c. 111);
 - (p) credit counselling services receiving financial assistance under agreements with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (q) young offenders services funded under Part IV of the *Child and Family Services Act, 1984* (c. 55) or under an agreement with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1980, c. 273);
 - (r) services to children funded or purchased by the Ministry of Community and Social Services under the *Child and Family Services Act, 1984* (c. 55).
2. Societies within the meaning of the *Child and Family Services Act, 1984* (c. 55) and agencies from whom such societies purchase child care services.
3. Corporations operating charitable institutions approved under the *Charitable Institutions Act* (R.S.O. 1980, c. 64).

- g) des services d'appoint pour les personnes atteintes d'un handicap physique qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- h) des services de réadaptation professionnelle financés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- i) des foyers annexes qui fonctionnent ou qui sont financés en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203);
- j) des services de soins infirmiers qui sont achetés ou financés en vertu de la *Loi sur les services d'aides familiales et d'infirmières visiteuses* (L.R.O. 1980, chap. 200);
- k) des ateliers établis en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- l) des services financés en vertu de la *Loi sur les services aux déficients mentaux* (L.R.O. 1980, chap. 118);
- m) des foyers pour déficients mentaux et des établissements auxiliaires aux termes de la *Loi sur les foyers pour déficients mentaux* (L.R.O. 1980, chap. 201);
- n) des garderies dont le fonctionnement est assuré par des personnes morales ou des municipalités en vertu de la *Loi sur les garderies* (L.R.O. 1980, chap. 111) qui reçoivent des subventions directes du ministère des Services sociaux et communautaires;
- o) des garderies et des sociétés de garde d'enfants en maisons privées qui fournissent des services et qui sont financées aux termes d'ententes conclues avec des municipalités en vertu de la *Loi sur les garderies* (L.R.O. 1980, chap. 111);
- p) des services de consultation en matière de crédit qui reçoivent une aide financière aux termes d'ententes conclues avec le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- q) des services aux jeunes contrevenants qui sont financés aux termes de la partie IV de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ou aux termes d'une entente conclue avec le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- r) des services aux enfants qui sont financés ou achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55).

2 Les sociétés au sens de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ainsi que les agences auprès desquelles ces sociétés achètent des services de soins aux enfants.

3 Les personnes morales qui assurent le fonctionnement d'établissements de bienfaisance agréés en vertu de la *Loi sur les établissements de bienfaisance* (L.R.O. 1980, chap. 64).

4. Boards of management operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203).

5. District Welfare Administration Boards operating under the *District Welfare Administration Boards Act* (R.S.O. 1980, c. 122).

MINISTRY OF CORRECTIONAL SERVICES

1. Any agency, board, commission, person or partnership that provides, under funding by the Ministry of Correctional Services,

- (a) assistance to witnesses, victims of crime or disabled persons;
- (b) educational, employment search, medical or promotional services;
- (c) supervision of inmates, parolees, probationers or persons accused of crime;
- (d) community residential services.

MINISTRY OF EDUCATION

1. Centre franco-ontarien de ressources pédagogiques.

MINISTRY OF HEALTH

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) an ambulance service, under the authority of a licence issued under the *Ambulance Act* (R.S.O. 1980, c. 20);
- (b) a nursing home, under the authority of a licence issued under the *Nursing Homes Act* (R.S.O. 1980, c. 320);
- (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the *Laboratory and Specimen Collection Centre Licensing Act* (R.S.O. 1980, c. 409);
- (d) a psychiatric facility within the meaning of the *Mental Health Act* (R.S.O. 1980, c. 262), the operation of which is funded in whole or in part by the Ministry of Health;
- (e) a home for special care established, approved or licensed under the *Homes for Special Care Act* (R.S.O. 1980, c. 202);
- (f) a home care facility within the meaning of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197) or a facility which, by arrangement with any such home care facility,

4 Les conseils de gestion qui fonctionnent en vertu de la *Loi sur les foyers pour personnes âgées et les maisons de repos* (L.R.O. 1980, chap. 203).

5 Les commissions de district pour l'administration de l'aide sociale fonctionnant en vertu de la *Loi sur les commissions de district pour l'administration de l'aide sociale* (L.R.O. 1980, chap. 122).

MINISTÈRE DES SERVICES CORRECTIONNELS

1 Les organismes, conseils, commissions, personnes ou sociétés en nom collectif qui fournissent, grâce au financement du ministère des Services correctionnels, les services suivants :

- a) des services d'aide aux témoins, aux victimes d'actes criminels ou aux personnes handicapées;
- b) des services d'enseignement, de recherche d'emploi, des services médicaux ou de promotion;
- c) la surveillance de détenus, de personnes en liberté conditionnelle, de probationnaires ou de personnes accusées d'un acte criminel;
- d) des services de placement en établissement communautaire.

MINISTÈRE DE L'ÉDUCATION

- 1 Centre franco-ontarien de ressources pédagogiques.

MINISTÈRE DE LA SANTÉ

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisation de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) un service d'ambulance, aux termes d'un permis délivré en vertu de la *Loi sur les services d'ambulance* (L.R.O. 1980, chap. 20);
- b) une maison de soins infirmiers, aux termes d'un permis délivré en vertu de la *Loi sur les maisons de soins infirmiers* (L.R.O. 1980, chap. 320);
- c) un laboratoire médical ou un centre de prélèvements, aux termes d'un permis délivré en vertu de la *Loi autorisant des laboratoires médicaux et des centres de prélèvements* (L.R.O. 1980, chap. 409);
- d) un établissement psychiatrique au sens de la *Loi sur la santé mentale* (L.R.O. 1980, chap. 262), dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- e) un foyer de soins spéciaux ouvert, agréé ou autorisé en vertu de la *Loi sur les foyers de soins spéciaux* (L.R.O. 1980, chap. 202);
- f) un établissement de soins à domicile au sens du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197) ou un établissement qui, aux termes d'une entente avec l'établissement de soins à domicile en question, répond aux conditions suivantes :

- (i) supplies nursing, physiotherapy, occupational therapy or speech therapy services that are insured home care services under section 44 of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197), and
 - (ii) is entitled to payment from the home care facility for or in respect of supplying such services;
 - (g) a rehabilitation centre or a crippled children's centre listed in Schedule 10 to Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197);
 - (h) a detoxification centre the operation of which is funded in whole or in part by the Ministry of Health;
 - (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health;
 - (j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Ministry of Health.
2. A district health council appointed under the *Ministry of Health Act* (R.S.O. 1980, c. 280).
3. A laundry that is operated exclusively for one or more than one hospital.
4. Hospital Food Services—Ontario Inc.
5. Toronto District Heating Corporation.
6. Addiction Research Foundation.
7. The operations in Ontario of the Canadian Red Cross Society, other than the provision by the society of home support services for the elderly and homemaking services.
8. The Hospital Council of Metropolitan Toronto.
9. The Hospital Medical Records Institute.
10. The Ontario Cancer Institute.
11. The Ontario Cancer Treatment and Research Foundation.
12. The Ontario Mental Health Foundation.
13. The Toronto Institute of Medical Technology.

MINISTRY OF INDUSTRY, TRADE AND TECHNOLOGY

1. Metropolitan Toronto Convention Centre.

- (i) fournit des services de soins infirmiers, des services de physiothérapie, d'ergothérapie ou d'orthophonie qui sont des services de soins à domicile assurés aux termes de l'article 44 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197),
- (ii) a droit au paiement, en contrepartie ou à l'égard de la fourniture des services en question, de frais qui lui sont versés par l'établissement des services à domicile en question;
- g) un centre de rééducation ou un centre pour enfants infirmes qui figure sur la liste de l'Annexe 10 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197);
- h) un centre de désintoxication dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- i) un service communautaire de santé mentale aux adultes dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, aux termes d'une entente conclue par écrit;
- j) un service de placement dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, conformément à une «Entente de service de coordination des placements» ou d'une autre entente conclue par écrit.

2 Un conseil régional de santé établi en vertu de la *Loi sur le ministère de la Santé* (L.R.O. 1980, chap. 280).

3 Une blanchisserie qui est exploitée exclusivement aux fins d'un hôpital ou plus.

4 Services alimentaires hospitaliers—Ontario Inc.

5 Toronto District Heating Corporation.

6 Fondation de la recherche sur la toxicomanie.

7 Les activités en Ontario de la Société canadienne de la Croix-Rouge, autres que la fourniture de services d'appoint à domicile pour les personnes âgées et de services d'aides familiales.

8 The Hospital Council of Metropolitan Toronto.

9 The Hospital Medical Records Institute.

10 The Ontario Cancer Institute.

11 The Ontario Cancer Treatment and Research Foundation.

12 The Ontario Mental Health Foundation.

13 The Toronto Institute of Medical Technology.

MINISTÈRE DE L'INDUSTRIE, DU COMMERCE ET DE LA TECHNOLOGIE

1 Metropolitan Toronto Convention Centre.

MINISTRY OF MUNICIPAL AFFAIRS

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) the collection, removal and disposal of garbage and other refuse for a municipality;
- (b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.

MINISTRY OF NATURAL RESOURCES

1. Conservation Authorities established under the *Conservation Authorities Act* (R.S.O. 1980, c. 85).

MINISTRY OF TOURISM AND RECREATION

- 1. St. Clair Parkway Commission.

MINISTRY OF TREASURY AND ECONOMICS

- 1. Ontario Municipal Employees Retirement Board.

MINISTÈRE DES AFFAIRES MUNICIPALES

1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :

- a) la collecte, l'enlèvement et l'élimination des ordures ménagères et d'autres déchets pour le compte d'une municipalité;
- b) le maintien et l'exploitation d'autobus pour le transport de passagers aux termes d'une entente conclue avec une municipalité.

MINISTÈRE DES RICHESSES NATURELLES

1 Les offices de protection de la nature créés en vertu de la *Loi sur les offices de protection de la nature* (L.R.O. 1980, chap. 85).

MINISTÈRE DU TOURISME ET DES LOISIRS

- 1 St. Clair Parkway Commission.

MINISTÈRE DU TRÉSOR ET DE L'ÉCONOMIE

1 La Commission du régime de retraite des employés municipaux de l'Ontario.

Bill 170

An Act to revise the Pension Benefits Act

The Hon. M. Kwinter
Minister of Financial Institutions



<i>1st Reading</i>	December 9th, 1986
<i>2nd Reading</i>	February 10th, 1987
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The Bill revises the *Pension Benefits Act*. The changes include the following:

1. The role of the administrator of a pension plan is emphasized. (sections 8, 20)
2. Minimum contents to be set out in a pension plan are established. (section 10)
3. A statutory standard of care is set out for persons involved in the administration of pension plans and pension funds. (section 23)
4. Provision is made for the appointment of advisory committees to monitor the pension plan where there is no member representation on the body responsible for the administration of the plan. (section 25)
5. A maximum period of two years of employment for full-time employees to become eligible to join a pension plan is established. (section 32)
6. The maximum eligibility for membership in a pension plan for part-time employees is two years of employment with minimum income based on the Year's Maximum Pensionable Earnings. (section 32)
7. All employees in a class of employees, whether full-time or part-time, are eligible to become members of a pension plan that has been established for that class of employees. (section 32)
8. The maximum normal retirement date for pension plans is set as not later than one year after the attainment of sixty-five years of age. (section 36)
9. The maximum vesting period for benefits earned after December 31, 1986 is twenty-four months. (section 38)
10. Employers' contributions must provide at least 50 per cent of a pension earned after December 31, 1986. (section 40)
11. Persons who terminate employment are entitled to receive an early retirement pension at any time within ten years of attaining the normal retirement date established by the plan. (section 42)
12. Employees are given transfer options with respect to their deferred pensions upon termination of employment. The portability will be subject to limitations prescribed by regulation that relate to the solvency of the pension plan and that require the amount transferred to be treated in the same way as a pension. (section 43)
13. Where a person entitled to start receiving pension benefits has a spouse at the date payment commences, that pension must be in the form of a joint and survivor pension, unless the spouses have made a decision that it should be otherwise. (section 45)
14. The remarriage of a person who is receiving a survivor benefit under a pension plan will not disentitle that person to payment of the pension. (section 48)
15. The Bill provides for a minimum benefit to be paid to a spouse or a beneficiary where a person who is entitled to a deferred pension dies prior to receiving that pension. (section 49)
16. Where spouses have decided to split a pension by domestic agreement, or an order under the *Family Law Act, 1986* gives a spouse an interest in the other spouse's pension, the agreement or order is not effective to require payment of the pension benefit until the pension is in pay. (section 52)

17. Pension plans will not be able to discriminate on the basis of sex. (section 53)
18. Reductions based on entitlements to benefits under the *Canada Pension Plan*, *Quebec Pension Plan* or *Old Age Security Act* will be regulated. Also, new pension plans will not be able to permit the reduction of a pension based on the person's entitlement under the *Old Age Security Act*. (section 55)
19. Notice requirements related to an application for payment out of a pension plan to an employer of any surplus in the plan are set out in the Act. Criteria which the plan will have to satisfy prior to payment of surplus out of a plan to the employer will be established by regulation. The Commission is prohibited from giving its consent to an application until a prescribed date. (sections 79, 80)
20. A formal hearing procedure for proposals made by the Superintendent is established. The hearings will be by the Commission. (sections 90, 92)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions


1. In this Act,

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond

any amount that the member is required to contribute, but does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund;

“administrator” means the person or persons that administer the pension plan;

“assets”, in relation to an employer, means assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

“bridging benefit” means a periodic payment provided under a pension plan to a former member of the pension plan for a temporary period of time after retirement for the purpose of supplementing the former member’s pension benefit until the former member is eligible to receive benefits under the *Old Age Security Act* (Canada) or is either eligible for or commences to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*; 

R.S.C. 1970,
cc. O-6, C-5

R.S.Q. 1977,
c. R-9

“certified copy” means a copy certified to be a true copy;

“collective agreement” has the same meaning as in the *Labour Relations Act*;

R.S.O. 1980,
c. 228

“Commission” means the Pension Commission of Ontario;

“commuted value” means the value calculated in the prescribed manner and as of a fixed date of a pension, a deferred pension, a pension benefit or an ancillary benefit;

“continuous”, in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of lay-off from employment;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan;


“defined benefit” means a pension benefit other than a defined contribution benefit;

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis;

“designated province” means a province or territory of Canada that is prescribed by the regulations as a province or territory in which there is in force legislation substantially similar to this Act;

“employee” means a natural person who is employed by an employer;



“employer”, in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning; 

“file” means file with the Superintendent;


“former member” means a person who has terminated employment or membership in a pension plan, and,

- (a) is entitled to a deferred pension payable from the pension fund,
- (b) is in receipt of a pension payable from the pension fund,
- (c) is entitled to commence receiving payment of pension benefits from the pension fund within one year after termination of employment or membership, or
- (d) is entitled to receive any other payment from the pension fund;

“Guarantee Fund” means the Pension Benefits Guarantee Fund continued by this Act;

“insurance company” means a corporation authorized to undertake life insurance in Canada;



“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and his or her spouse and thereafter during the life of the survivor of them; 

“member” means a member of the pension plan;

“Minister” means the member of the Executive Council designated by the Lieutenant Governor in Council for the purposes of this Act;

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*, 1982; 1982, c. 4

“normal retirement date” means the date or age specified in the pension plan as the normal retirement date of members;

“partial wind up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;

“participating employer”, in relation to a multi-employer pension plan, means an employer required to make contributions to the multi-employer pension plan;

“pension” means a pension benefit that is in payment;

“pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member or former member during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan or to which any other person is entitled upon the death of a member or former member;


“pension committee” means a committee that is the administrator of a pension plan;

“pension fund” means the fund maintained to provide benefits under or related to the pension plan;

“pension plan” means a plan organized and administered to provide pensions for employees, but does not include,

- (a) an employees’ profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),

R.S.C. 1952,
c. 148

- (b) a plan to provide a retiring allowance as defined in subsection 248 (1) of the *Income Tax Act* (Canada),
- (c) a plan under which all pension benefits are provided by contributions made by members, or
- (d) any other prescribed type of plan; 

“prescribed” means prescribed by the regulations;

“qualification date” means, in respect of Ontario, the 1st day of January, 1965, and, in respect of a designated province, the date on which under the law of the designated province a pension plan must be registered by the proper authority in the designated province;

“reciprocal transfer agreement” means an agreement related to two or more pension plans that provides for the transfer of moneys or credits for employment or both in respect of individual members;

“registration” means registration under this Act;

“regulations” means regulations made under this Act;

“spouse” means either of a man and woman who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act, 1986*;

1986, c. 4

“Superintendent” means Superintendent of Pensions;

“surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

“termination”, in relation to employment, includes retirement and death;

“trade union” has the same meaning as in the *Labour Relations Act*; R.S.O. 1980,
c. 228

“wind up” means the termination of a pension plan and the distribution of the assets of the pension fund;

“Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan*. R.S.C. 1970,
c. C-5

APPLICATION

2. This Act binds the Crown. Crown bound

3. This Act applies to every pension plan that is provided for persons employed in Ontario. Employees
in Ontario

4.—(1) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his or her employer is located and to which the person is required to report for work. Place of
employment

(2) A person who is not required to report for work at an establishment of his or her employer shall be deemed to be employed in the province in which is located the establishment of his or her employer from which the person’s remuneration is paid. Idem

5. The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations. Greater
pension
benefits

REGISTRATION AND ADMINISTRATION

6.—(1) No person shall administer a pension plan unless a certificate of registration or an acknowledgment of application for registration of the pension plan has been issued by the Superintendent. Prohibition
of adminis-
tration of
unregistered
pension plan


(2) Subsection (1) does not apply to prevent administration during the first ninety days after the establishment of the pension plan. Application
of subs. (1)

7.—(1) No person shall administer a pension plan if registration of the pension plan has been refused or revoked by the Superintendent. Refusal or
revocation

(2) Subsection (1) does not apply to prevent administration for the purpose of wind up of a pension plan. Exception

Adminis-
trator

8.—(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,

- (a) the employer or employers;
 - (b) a pension committee composed of one or more representatives of,
 - (i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and
 - (ii) members of the pension plan;
 - (c) a pension committee composed of representatives of members of the pension plan;
 - (d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;
- ➡
- (e) If the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; or 
 - (f) a board, agency or commission made responsible by an Act of the Legislature for the administration of the pension plan.

Additional
members

(2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

Affiliate
1982, c. 4

(3) For the purpose of clause (1) (b), “employer” includes “affiliate” as defined in the *Business Corporations Act, 1982*, if the employer is a body corporate.

Application
for
registration

9.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is established, for registration of the pension plan.

(2) An application for registration shall be made by paying the prescribed fee to the Commission and filing,

Requirements
for
registration

- (a) a completed application in the prescribed form;
- (b) certified copies of the documents that create and support the pension plan;
- (c) certified copies of the documents that create and support the pension fund;
- (d) a certified copy of any reciprocal transfer agreement related to the pension plan;
- (e) a certified copy of the explanations and other information provided under subsection 26 (1); and
- (f) any other prescribed documents.

(3) For the purpose of subsection (2), “document” includes “collective agreement”.

Collective
agreement

10.—(1) The documents that create and support a pension plan shall set out the following information:

Contents of
pension plan

- 1. The method of appointment and the details of appointment of the administrator of the pension plan.
- 2. The conditions for membership in the pension plan.
- 3. The benefits and rights that are to accrue upon termination of employment, termination of membership, retirement or death.
- 4. The normal retirement date under the pension plan.
- 5. The requirements for entitlement under the pension plan to any pension benefit or ancillary benefit.
- 6. The contributions or the method of calculating the contributions required by the pension plan.
- 7. The method of determining benefits payable under the pension plan.
- 8. The method of calculating interest to be credited to contributions under the pension plan.

9. The mechanism for payment of the cost of administration of the pension plan and pension fund.
10. The mechanism for establishing and maintaining the pension fund.
11. The treatment of surplus during the continuation of the pension plan and on the wind up of the pension plan.
12. The obligation of the administrator to provide members with information and documents required to be disclosed under this Act and the regulations.
13. The method of allocation of the assets of the pension plan on windup.
14. Particulars of any predecessor pension plan under which members of the pension plan may be entitled to pension benefits.
15. Any other prescribed information related to the pension plan or pension fund or both.

Multi-
employer
pension plan

(2) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan.

Gradual and
uniform
accrual of
pension
benefits

11.—(1) A pension plan is not eligible for registration unless it provides for the accrual of pension benefits in a gradual and uniform manner.

Variable
contributions
or pension
benefits

(2) A pension plan is not eligible for registration if the formula for computation of the employer's contributions to the pension fund or the pension benefit provided under the pension plan is variable at the discretion of the employer.

Variable
deferred
profit-sharing

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits is not eligible for registration if the formula governing allocation of contributions to the pension fund and profits among members of the plan is variable at the discretion of the employer.

Exception

(4) Notwithstanding subsections (1), (2) and (3), the Superintendent may register a pension plan if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members.

12.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

Application
for
registration
of
amendment

(2) An application for registration of an amendment shall be made by paying the prescribed fee to the Commission and filing,

Requirements
for
registration

- (a) a certified copy of the amending document;
- (b) certified copies of any other prescribed documents; and
- (c) any other prescribed information.

(3) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund.

Filing of
changes

13.—(1) An amendment to a pension plan is not effective until an application for registration of the amendment is made in accordance with this Act and the regulations.

When
amendment
becomes
effective

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered.

Retroactive
amendment

14.—(1) An amendment to a pension plan is void if the amendment purports to reduce,

Reduction
of benefits

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

(2) Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Application
of subs. (1)

Idem

(3) Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

Acknowledgment of application for registration

15. The Superintendent shall issue an acknowledgment of application for registration of a pension plan within thirty days after receiving an application for the registration that complies with this Act and the regulations.

Issuance of certificate of registration

16. The Superintendent shall issue a certificate of registration for each pension plan registered under this Act.

Issuance of notice of registration

17. The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act.

Refusal or revocation of registration

18.—(1) The Superintendent may,

- (a) refuse to register a pension plan that does not comply with this Act and the regulations;
- (b) revoke the registration of a pension plan that does not comply with this Act and the regulations;
- (c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;
- (d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;
- (e) revoke the registration of an amendment that does not comply with this Act and the regulations.

Application of subs. (1)

(2) The authority of the Superintendent under subsection (1) is subject to the right to a hearing under section 90.

Effect of refusal or revocation

(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.

Idem

(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.

(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations. Wind up

19.—(1) Every employer who maintains a pension plan on the date this Act comes into force shall amend the pension plan to conform with this Act and the regulations within two years after the date this Act comes into force. Conforming amendment

(2) If a pension plan is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is in effect on the date this section comes into force, the parties to the collective agreement or arbitration award shall amend the pension plan to conform to this Act and the regulations not later than the earlier of, Exception
R.S.O. 1980,
c. 228

(a) the date that is three years after the date on which this section comes into force; or

(b) the date that is two years after the date on which this section comes into force, where the collective agreement or arbitration award expires within the two-year period.

(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is the subject of an application for registration submitted after this Act comes into force, if the collective agreement was entered into or the arbitration award was made before this Act comes into force and the pension plan would have been eligible for registration under the *Pension Benefits Act*. Registration

R.S.O. 1980,
c. 373

(4) Subsection (2) applies to a pension plan referred to in subsection (3). Application of subs. (2)

20.—(1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations. Duty of administrator

(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations. Application of subs. (1)

(3) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with, Idem

- (a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and
- (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

Application
of subs. (3)

(4) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations.

Idem,
amendment

(5) The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment.

Adminis-
trator's
annual
information
return

21.—(1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the prescribed form and shall pay the prescribed filing fee.

Additional
reports

(2) The administrator of a pension plan shall file additional reports at the times and containing the information prescribed by the regulations.

Reciprocal
transfer
agreement

22. An administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan.

Care,
diligence
and skill


23.—(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.


Special
knowledge
and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of his or her profession, business or calling, ought to possess.


Member of
pension
committee,
etc.


(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

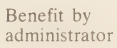
(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit his or her interest to conflict with his or her duties and powers in respect of the pension fund. 

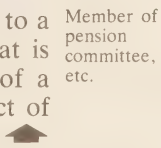
(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund. 


(6) No person other than a prescribed person shall be a trustee of a pension fund. 

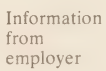
(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable. 

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4). 


(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan. 

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan. 

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan. 

24. An employer shall provide to the administrator of the pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations. 


Advisory
committee

25.—(1) The members and former members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee. 

Representa-
tion

(2) Each class of employees that is represented in the pension plan is entitled to appoint at least one representative to the advisory committee established under subsection (1).

Idem, former
members

(3) The former members of the pension plan are entitled to appoint one representative to the advisory committee established under subsection (1). 

Purposes

(4) The purposes of an advisory committee are,

- (a) to monitor the administration of the pension plan;
- (b) to make recommendations to the administrator respecting the administration of the pension plan; and
- (c) to promote awareness and understanding of the pension plan on the part of members of the pension plan and persons receiving pension benefits under the pension plan.

Examination
of records

(5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without the person's prior consent.

Application
of subs. (1)

(6) Subsection (1) does not apply,

- (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; or
- (b) in respect of a multi-employer pension plan established pursuant to a collective agreement.

Adminis-
trator
to provide
information

(7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee.

DISCLOSURE OF INFORMATION

26.—(1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member of the pension plan, Information from administrator

- (a) an explanation of the provisions of the plan that apply to the person;
- (b) an explanation of the person's rights and obligations in respect of the pension plan; and
- (c) any other information prescribed by the regulations.


(2) The administrator shall provide the information mentioned in subsection (1), Time

- (a) to each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;
- (b) to a person who is likely to become eligible to become a member of the pension plan, within the prescribed period of time before the date on which the person is likely to become eligible;
- (c) to each person who becomes eligible to become a member of the pension plan upon becoming employed by the employer, within the prescribed period of time after the date on which the person becomes so employed.

(3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection. Information from employer



27.—(1) If the administrator of a pension plan applies for registration of an amendment to the pension plan that would result in a reduction of pension benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund, the Superintendent shall require the administrator to transmit to such persons as the Superintendent may specify a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Superintendent, and the administrator shall provide to the Superintendent a copy of the notice and Notice of proposed amendment

shall certify to the Superintendent the date on which the last such notice was transmitted. 

Registration

(2) If the Superintendent has required the administrator to transmit notices under subsection (1), the Superintendent shall not register an amendment mentioned in that subsection before the expiration of forty-five days after the date certified to the Superintendent under that subsection, but after the expiration of the forty-five day period the Superintendent may register the amendment with such changes as are requested in writing by the administrator.

Notice after registration

(3) Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, former member or other person entitled to payment from the pension fund who is affected by the amendment.

Order dispensing with notice


(4) The Superintendent need not require the transmittal of notices under subsection (1) or by order may dispense with the notice required by subsection (3), or both,

(a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;

(b) if the amendment has been agreed to by a trade union that represents the members; or

(c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Notice to trade union

(5) Where a proposed amendment affects members or former members represented by a trade union that is a party to a collective agreement filed as a document that creates or supports a pension plan, the administrator shall transmit to the trade union the written notice mentioned in subsection (1). 

Annual statement of pension benefits

28. The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits.

Statement of benefits

29.—(1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a

member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.

(2) Subsection (1) applies in respect of a multi-employer pension plan where a member ceases to be a member, but does not apply where a member terminates employment with an employer but continues to be a member.

Multi-
employer
pension plan

30.—(1) On written request, the administrator of a pension plan shall make available the prescribed documents and information in respect of the pension plan and the pension fund for inspection without charge by,

Inspection of
adminis-
trator's
documents

- (a) a member;
- (b) a former member;
- (c) the spouse of a member or former member;
- (d) any other person entitled to pension benefits under the pension plan;
- (e) an agent authorized in writing by a person mentioned in clause (a), (b), (c) or (d); or
- (f) a representative of a trade union that represents members of the pension plan.

(2) The administrator shall make the prescribed documents and information available,

Place of
inspection

- (a) for a member, at the premises of the employer where the member is employed;
- (b) for a former member, at the premises where the former member was employed; or
- (c) for a member, former member or any other person, at such other location as may be agreed upon by the administrator and the member, former member or other person making the request.

(3) The administrator shall permit the person making the inspection to make extracts from or to copy the prescribed documents and information.

Extracts
or copies

Idem

(4) On request, the administrator shall provide the person making the inspection with copies of any of the prescribed documents or information upon payment to the administrator of a reasonable fee.



Limitation

(5) A member, a former member, a spouse, an other person, an agent or a trade union by a representative is entitled to make an inspection under subsection (1) not more than once in a calendar year.

Inspection
of filed
documents

31. The individuals mentioned in clauses 30 (1) (a) to (f) are entitled to inspect at the offices of the Commission during business hours of the Commission the documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund, and are entitled to copies of the documents upon payment of the prescribed fees.



MEMBERSHIP

Eligibility
for
membership

32.—(1) Every employee of a class of employees for whom a pension plan is established is eligible to be a member of the pension plan.

Full-time
employment

(2) An employee in a class of employees for whom a pension plan is maintained is entitled to become a member of the pension plan upon application at any time after completing twenty-four months of continuous full-time employment.

Part-time
employment

(3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer, with the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings; or

(b) 700 hours of employment with the employer,


in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan.

Multi-
employer
pension plan

(4) A multi-employer pension plan may require not more than the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings with one or more of the participating employers; or

- (b) 700 hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan. 

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. Approval


33. A member of a pension plan who is employed continuously on a less than full-time basis does not cease to be a member by reason only that he or she has earnings of less than 35 per cent of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than 700 hours in a calendar year. Loss of membership

34.—(1) Where there is a dispute as to whether or not an employee is a member of a class of employees for whom a pension plan is established or maintained, the Superintendent, subject to section 90, by order may require the administrator to accept the employee as a member. Dispute as to member of class of employees

(2) The Superintendent may make the order if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the class. Ground for order

35. An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment. Separate pension plan

RETIREMENT AND VESTING

 **36.—**(1) The normal retirement date under a pension plan submitted for registration after the date this Act comes into force shall not be later than one year after the attainment of sixty-five years of age. Normal retirement date

(2) Every pension plan registered or submitted for registration before the date on which this Act comes into force shall be deemed to specify a normal retirement date in respect of Transitional

pension benefits that accrue after that date that is not later than one year after attainment of sixty-five years of age, unless the pension plan specifies an earlier retirement date.

Right to
pension

(3) A member of a pension plan who continues employment and membership in the pension plan after attaining the age that is the normal retirement date under the pension plan is entitled on retirement from employment to payment of the pension benefits to which the member would have been entitled had the member retired from employment or terminated membership in the pension plan on attaining the normal retirement date and any additional pension benefits accrued under the pension plan that result from the member's employment after the normal retirement date.

Continuation
after normal
retirement
date

(4) A member of a pension plan who continues employment after attaining the age that is the normal retirement date under the pension plan and who is not receiving a pension under the pension plan is entitled to continue membership in the pension plan and has the right to continue to accrue pension benefits under the pension plan subject to any terms of the pension plan,

(a) fixing a maximum number of years of employment or membership that can be taken into account for purposes of determining a pension benefit; or

(b) fixing a maximum amount of the pension benefit.

Deferred
pension
for past
service

37.—(1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

(2) The qualifications are,

(a) that the member must have been employed by the employer, or have been a member of the pension plan, for a continuous period of at least ten years;

(b) that the member must have reached the age of forty-five years; and

(c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on the 31st day of December, 1986 in respect of employment before

the 1st day of January, 1987 in Ontario or in a designated province,

- (a) under the terms of the pension plan, with respect to employment on or after the qualification date;
- (b) by an amendment to the pension plan made on or after the qualification date; and
- (c) by the creation of a new pension plan on or after the qualification date.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Application
of
subss. (1-3)

38.—(1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Deferred
pension

➡ (2) The qualifications are,

Qualifications

- (a) that the member must be a member on or after the date on which this Act comes into force; ➡
- (b) that the member must be a member for a continuous period of at least twenty-four months; and
- (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

Amount

- (a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date if the qualification date is later than the 31st day of December, 1986;
- (b) under any amendment made to the pension plan after the 31st day of December, 1986; and
- (c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Application
of
subss. (1-3)

Termination
by member

39.—(1) A person who is,

- (a) a member of a multi-employer pension plan;
- (b) a member of a pension plan who is employed by the employer on a less than full-time basis; or
- (c) a member of a pension plan who has been laid off from employment by the employer,

is entitled to terminate his or her membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period of time as is specified in the pension plan.

Effect of
termination

(2) For the purpose of determining benefits under this Act, a person mentioned in subsection (1) who terminates his or her membership in a pension plan shall be deemed to have terminated his or her employment.

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans.




Determina-
tion of
entitlement

(4) For the purpose of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan shall be deemed not to have terminated employment until the member terminates membership in the pension plan.

Certification
of new
bargaining
agent
R.S.O. 1980,
c. 228

(5) Where a member of a multi-employer pension plan is represented by a trade union, which, in accordance with section 56 of the *Labour Relations Act*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate membership in the first plan.

Application
of subs. (5)

(6) Subsection (5) does not apply where there is a reciprocal agreement respecting the two pension plans. 

BENEFITS



Value of
deferred
pension

40.—(1) If the commuted value of a former member's pension or deferred pension accrued in respect of employment before the 1st day of January, 1987 is less than the value of the contributions the former member was required to make

under the pension plan before that date plus interest credited to the contributions, the former member is entitled to have the commuted value of the pension or deferred pension increased so that the commuted value is equal to the value of the contributions plus interest.

(2) An increase in the value of the pension or deferred pension in respect of employment before the 1st day of January, 1987 that results from an amendment to the pension plan made on or after that date may be included in calculating the commuted value of the pension or deferred pension for the purposes of subsection (1).

Effect of
amendment

(3) A former member's contributions to a pension plan made on or after the 1st day of January, 1987 and the interest on the contributions shall not be used to provide more than 50 per cent of the commuted value of a pension or deferred pension in respect of contributory benefits accrued after that date to which the member is entitled under the pension plan on termination of membership or employment.

50 per cent
rule

(4) A former member who is entitled to a pension or deferred pension on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the former member's contributions under the pension plan made on or after the 1st day of January, 1987 and the interest on the contributions exceed one-half of the commuted value of the former member's pension or deferred pension in respect of the contributory benefit accrued after that date.

Entitlement
to excess
amount

(5) The following may be excluded in determining that part of the commuted value of a pension or deferred pension to which subsections (3) and (4) apply:

Exclusions

1. Defined contribution benefits.
2. Benefits that result from additional voluntary contributions.
3. In the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions.
4. Any other benefits prescribed for the purposes of this subsection.

Matters that
may be
included

(6) The following may be included by the administrator of the pension plan in calculating a member's contributory benefit for the purposes of subsection (3):

1. Ancillary benefits related to employment on or after the 1st day of January, 1987.
2. Increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the 1st day of January, 1987 but that are not included in calculating commuted value under subsection (2).
3. Pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the 1st day of January, 1987.

Ancillary
benefits

41.—(1) A pension plan may provide the following ancillary benefits:


1. Disability benefits.
2. Death benefits in excess of those provided in section 49 (pre-retirement death benefit).
3. Bridging benefits.
4. Supplemental benefits, other than bridging benefits, payable for a temporary period of time.
5. Early retirement options and benefits in excess of those provided by section 42 (early retirement option).
6. Postponed retirement options and benefits in excess of those referred to in subsection 36 (4).
7. Any prescribed ancillary benefit.


Use in
calculating
pension
benefit


(2) An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit.

Consent of
employer

(3) For the purposes of subsection (2) and clause 14 (1) (c), where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member

or former member has met all other eligibility requirements, the employer shall be deemed to have given the consent to the member or former member. 

42.—(1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she,  Early retirement option

(a) terminated employment on or after the date on which this Act comes into force; 

(b) is entitled to a deferred pension under this Act; and

(c) is within ten years of attaining the normal retirement date.


(2) A member who is within ten years of attaining the normal retirement date and who would be entitled to a deferred pension on termination of employment with the employer is entitled upon termination of the employment or on the wind up of the pension plan in whole or in part to receive an early retirement pension under the pension plan. Idem


(3) The commuted value of a member's early retirement pension must be not less than the commuted value of the member's pension benefit under the pension plan. Commuted value

(4) The commuted value of a former member's early retirement pension must be not less than the commuted value of the former member's deferred pension benefit under the pension plan. Idem, former member

(5) The member or former member is entitled to require the commencement of payment of the early retirement pension at any time within the ten year period mentioned in subsection (1) or (2). Payment

(6) An election under subsection (1) or (2) shall be made in writing, signed by the member or former member and delivered to the administrator of the pension plan. Election

 **43.**—(1) A former member of a pension plan who, on or after the date on which this Act comes into force, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension, Transfer

- (a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
- (b) into a prescribed retirement savings arrangement; or
- (c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan. 

Limitation

(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

Application
of subs. (1)

(3) Subsection (1) does not apply to a former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan or under section 42, unless the pension plan provides such an entitlement.

Direction

(4) A former member may exercise his or her entitlement under subsection (1) by delivering to the administrator within the prescribed period of time a direction in a form supplied by the Superintendent.

Compliance
with
direction


(5) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

Terms of
arrangement
or deferred
annuity

(6) The administrator shall not make payment,

- (a) under clause (1) (b) unless the retirement savings arrangement meets the requirements prescribed by the regulations; or



- (b) under clause (1) (c) unless the contract to purchase the deferred life annuity meets the prescribed requirements. 

Approval

(7) If a payment under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent.

(8) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Terms and
conditions

(9) If a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent by order, subject to section 90 (hearing), may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

Order for
repayment

(10) Subject to section 90 (hearing and appeal), an order for payment under subsection (9), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Enforcement

➡ (11) The administrator is discharged on making the payment or transfer in accordance with the direction of the former member if the payment or transfer complies with this Act and the regulations.

Discharge of
administrator

44.—(1) The administrator of a pension plan who is required by the pension plan to provide a pension, a deferred pension or an ancillary benefit may purchase the pension, deferred pension or ancillary benefit from an insurance company.

▲
Purchase
of pension

(2) The authority of the administrator under subsection (1) is subject to the entitlement of a member under section 43 and to the limitations prescribed in relation to transfers of funds from pension funds.

Limitations

(3) If a purchase under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the Superintendent.

Approval by
Superin-
tendent

(4) The Superintendent may approve a purchase mentioned in subsection (3) subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Idem

(5) If a purchase that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is a failure to comply with a term or condition attached to the approval, the Superintendent, subject to section 90 (hearing), by order may require any person to whom payment under

Order for
repayment

subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

Enforcement

(6) Subject to section 90 (hearing and appeal), an order for payment under subsection (5), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Joint and survivor pension benefits

45.—(1) Every pension paid under a pension plan to a former member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.

Commuted value

(2) The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the former member.

Amount of survivor benefit

(3) The amount of the pension payable to the survivor of the former member and the spouse of the former member shall not be less than 60 per cent of the pension paid to the former member during the joint lives of the former member and his or her spouse.

Application of subss. (1-3)

(4) Subsections (1) to (3) do not apply,

(a) in respect of a pension benefit if payment of the pension has commenced before the date on which this Act comes into force; or

(b) in respect of a former member who is living separate and apart from his or her spouse on the date that payment of the first instalment of the pension is due.

Deferred life annuity

(5) Where,

(a) prior to the date on which this Act comes into force, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under the *Pension Benefits Act*;

(b) payments have not commenced under the annuity on the date on which this Act comes into force; and

(c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section and the insurance company shall make payments accordingly.

(6) For the purposes of subsection (5), the insurance company shall be deemed to be the administrator under sections 46 and 47.

Application
of ss.46, 47

46.—(1) Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit.

Information
for payment

(2) The person entitled to the payment shall provide the information to the administrator.

Person to
provide
information

(3) In the absence of actual notice to the contrary, the administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2) or, if the person does not provide the information, in accordance with the latest information in the records of the administrator.

Discharge
of
administrator

47.—(1) The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company a written waiver in the prescribed form or a certified copy of a domestic contract, as defined in Part IV of the *Family Law Act, 1986*, containing the waiver.

Waiver of
joint and
survivor
pension
benefit

1986, c. 4

(2) The waiver is not effective unless the written direction or certified copy is delivered to the administrator within the period of twelve months immediately preceding the commencement of payment of the pension benefit.

Time

(3) Persons who have delivered a waiver under subsection (1) may jointly cancel the waiver by written and signed notice delivered to the administrator before commencement of payment of the pension benefit.

Cancellation
of waiver

48.—(1) The spouse of a deceased former member of a pension plan who is receiving a pension under the pension plan is not disentitled to payment of the pension by reason only of remarriage after the death of the former member.

Remarriage
of spouse

Application
of subs. (1)

(2) Subsection (1) applies in respect of pensions that are being paid on the 1st day of January, 1987 or that commence to be paid after the 31st day of December, 1986.



Pre-
retirement
death benefit

49.—(1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 38 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the deferred pension; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

Idem

(2) If a member of a pension plan continues in employment after the normal retirement date under the pension plan and dies before commencement of payment of pension benefits referred to in section 38, the person who is the spouse of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the pension benefit; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the pension benefit.

Application
of
subs. (1, 2)

(3) Subsections (1) and (2) do not apply where the member or former member and his or her spouse are living separate and apart on the date of the death of the member or former member.

Election

(4) A spouse who has an entitlement under subsection (1) or (2) shall elect within the prescribed period of time to receive payment under clause (a) or (b) of the subsection and if the spouse does not make an election, the spouse shall be deemed to have elected to receive an immediate pension.

Calculation
of benefit

(5) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's employment were terminated immediately before the member's death.

Designated
beneficiary

(6) A member or former member of a pension plan may designate a beneficiary and the beneficiary is entitled to be

paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if,

- (a) the member or former member does not have a spouse on the date of death; or
- (b) the member or former member is living separate and apart from his or her spouse on that date.

(7) The personal representative of the member or former member is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member or former member, if the member or former member has not designated a beneficiary under subsection (6) and, Estate entitlement

- (a) does not have a spouse on the date of the member or former member's death; or
- (b) is living separate and apart from his or her spouse on that date.

(8) If the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member or former member upon the death of the member or former member, the commuted value of the payments may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7). Dependent children

(9) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment. Information

(10) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person. Discharge of administrator

(11) A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following: Offset

1. The reduction shall be calculated in the prescribed manner.
2. The reduction shall not exceed the prescribed limits.

Discharge of
entitlement

(12) Payment in accordance with this section replaces the entitlement of a member or former member in respect of a deferred pension mentioned in section 38.


Order or
domestic
contract

(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in a domestic contract or an order referred to in section 52 (payment on marriage breakdown).

Waiver

(14) A member and his or her spouse may waive the spouse's entitlement under subsection (1) or (2) in the prescribed form and, for the purpose, subsections (6) and (7) apply as if the member does not have a spouse on the date of the member's death.

Definition
R.S.O. 1980,
c. 143

(15) In this section, "personal representative" has the same meaning as in the *Estates Administration Act*. 

Variation of
payment to
disabled
person

50. A pension plan may permit variation in the terms of payment of a pension or deferred pension by reason of the mental or physical disability of a member or former member that is likely to shorten considerably the life expectancy of the member or former member.

Commuted
value

51.—(1) A pension plan may provide for payment to a former member of the commuted value of a benefit if the annual benefit payable at the normal retirement date is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year that the former member terminated employment.

Idem

(2) A pension plan registered before the date on which this Act comes into force may provide that upon termination of employment a person entitled to a deferred pension under section 37 (deferred pension) is entitled to payment of an amount not greater than 25 per cent of the commuted value of the deferred pension.

Payment on
marriage
breakdown
1986, c. 4

52.—(1) A domestic contract as defined in Part IV of the *Family Law Act, 1986* or an order under Part I of that Act is not effective to require payment of a pension benefit before the earlier of,

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the relevant member or former member.



(2) A domestic contract or an order mentioned in subsection (1) is not effective to cause a party to the domestic contract or order to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member or former member during the period when the party and the member or former member were spouses.

Maximum
percentage



(3) If payment of a pension or a deferred pension is divided between spouses by a domestic contract or an order mentioned in subsection (1), the administrator is discharged on making payment in accordance with the domestic contract or order.

Discharge of
administrator

(4) If a domestic contract or an order mentioned in subsection (1) affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner.

Revaluation
of joint and
survivor
pension



(5) A spouse on whose behalf a certified copy of a domestic contract or order mentioned in subsection (1) is given to the administrator of a pension plan has the same entitlement, on termination of employment by the member or former member, to any option available in respect of the spouse's interest in the pension benefits as the member or former member named in the domestic contract or order has in respect of his or her pension benefits.

Transfer



53.—(1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in,

Discrimi-
nation
on basis of
sex

- (a) determining the amount of contributions required to be made by a member of the plan;
- (b) determining the pension benefits or the commuted value of pension benefits that a member, former member or other beneficiary is or may become entitled to;
- (c) the provision of eligibility conditions for membership; and
- (d) the provision of ancillary benefits.

(2) In order to comply with subsection (1), the administrator may,

Adminis-
tration

- (a) use annuity factors that do not differentiate as to sex;


- (b) provide for employer contributions that vary according to the sex of the employee; or
- (c) use any prescribed method of calculation or valuation.

Application

(3) This section applies in respect of contributions, benefits and conditions in relation to,

- (a) employment after the 31st day of December, 1986;
- (b) employment before the 1st day of January, 1987, in so far as it is dealt with in an amendment made to the pension plan after the 31st day of December, 1986; and
- (c) employment before the 1st day of January, 1987, in so far as it is dealt with in a pension plan established after the 31st day of December, 1986.

Inflation
protection

 **54.**—(1) Pension benefits, pensions or deferred pensions shall be adjusted in accordance with the established formula or formulas and in the prescribed manner to provide inflation-related increases.

Idem

(2) Any formula or formulas for any inflation related adjustments to pension benefits, pensions or deferred pensions shall be established only by amendment to this Act.

C.P.P./
Q.P.P.
offsets

R.S.C. 1970,
c. C-5

R.S.Q. 1977,
c. R-9

R.S.C. 1970,
c. O-6

55.—(1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) shall not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

Idem

(2) The amount of the reduction of a member's pension benefit required under the pension plan in relation to payments mentioned in subsection (1) shall not be increased by reason of an increase in the payments after the date on which the member's employment is terminated.

Reduction re
*Old Age
Security Act*
(Canada)

(3) A pension plan for registration of which application is made on or after the date on which this Act comes into force shall not permit the reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada).

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered under the *Pension Benefits Act* that permitted such a reduction.

Application of subs. (3)
R.S.O. 1980,
c. 373

(5) A pension plan shall not permit reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the 1st day of January, 1987.

Idem
R.S.C. 1970,
c. O-6

(6) Where a pension plan provides for the reduction of a member's or former member's bridging benefit by reason that the member or former member receives or is eligible to receive retirement benefits before attaining sixty-five years of age under the *Canada Pension Plan* or the *Quebec Pension Plan*, the reduction may only be made in the prescribed circumstances.

Bridging benefit

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9

(7) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada), the variation shall be applied in the prescribed manner.

Variations based on other benefits
R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

CONTRIBUTIONS

56.—(1) A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations.

Funding

(2) An employer required to make contributions under a pension plan, or a person required to make contributions under a pension plan on behalf of an employer, shall make the contributions in the prescribed manner and in accordance with the prescribed requirements for funding,

Payment

(a) to the pension fund; or

(b) if pension benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan.

57.—(1) The administrator of a pension plan or, if there is an agent of the administrator responsible for receiving contributions under the pension plan, the administrator and the agent shall give written notice to the Superintendent of a contribution that is not paid when due.

Notice to Superintendent

(2) The administrator and the agent shall give the notice to the Superintendent within sixty days after the date on which

When notice required

the administrator or the agent first became aware of the failure to pay the contribution.



Multi-
employer
pension plan

(3) The administrator and the agent of a multi-employer pension plan shall give the notice to the Superintendent within the prescribed period of time after the date on which the administrator or the agent first became aware of the failure to pay the contribution.



Trust
property

58.—(1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

Money
withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be money received by the employer from the employee.

Accrued
contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

Wind up

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

Lien and
charge

(5) The administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4).

Application
of
subss. (1,
3, 4)

(6) Subsections (1), (3) and (4) apply whether or not the moneys have been kept separate and apart from other money or property of the employer.



Moneys to
be paid to
insurance
company

(7) Subsections (1) to (6) apply with necessary modifications in respect of moneys to be paid to an insurance company that guarantees pension benefits under a pension plan.



Accrual

59.—(1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

(2) Interest on contributions shall be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements.

Interest

60. The administrator may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations.



Collection of contributions

61. The administrator of a multi-employer pension plan may require a person who receives contributions to the pension fund or who administers or invests the pension fund to be bonded in an amount required by the administrator or in the prescribed amount.

Bond

62. An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan.

Statement of employer's obligation

 **63.** Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations. 

Investment of pension fund

LOCKING IN

64.—(1) No member or former member is entitled to a refund from a pension fund of contributions made in respect of employment in Ontario or a designated province on or after the qualification date.

Refunds

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member or former member or a payment under subsection 40 (4) (entitlement to excess amount).

Idem

(3) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a pension or to a deferred pension under section 37 (deferred pension for past service) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment before the 1st day of January, 1987.

Refund related to past employment

Refund
related
to post-
reform
employment

(4) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a pension or to a deferred pension under section 38 (deferred pension) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment after the 31st day of December, 1986.

Application
of subs. (1)

(5) Subsection (1) does not apply,

- (a) to prevent the commutation of a pension benefit under subsection 51 (1) (commuted value);
- (b) to prevent a payment under subsection 51 (2); or
- (c) to such other circumstances as are prescribed.

Application
of
subss. (3, 4)

(6) Subsections (3) and (4) do not apply in respect of a member of a multi-employer pension plan unless the member terminates his or her membership in the multi-employer pension plan.

Refund with
consent

(7) Notwithstanding subsection (1), on application by the administrator, contributions may be refunded to a member or a former member with the consent of the Commission.

Consent of
Commission

(8) On application by the administrator of a pension plan, the Commission may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.

Shorter
qualification
periods

65.—(1) A pension plan may provide for shorter qualification periods for entitlement to a deferred pension than those set out in sections 37 (deferred pension for past service) and 38 (deferred pension).

Refund

(2) A pension plan that provides for qualification periods for a deferred pension that are shorter than the periods set out in section 37 or 38 may permit a refund of contributions to a person who terminates employment after becoming entitled to a deferred pension under the pension plan before the completion of the qualification period referred to in section 37 or 38.

Void
transactions

66.—(1) Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan is void.

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with section 43 (transfer), 44 (purchase of pension), clause 49 (1) (b) (pre-retirement death benefit) or subsection 74 (2) (transfer rights on wind up) is void. Idem

(3) Subsections (1) and (2) do not apply to prevent the assignment of an interest in moneys payable under a pension plan or moneys payable as a result of a purchase or transfer under section 43, 44, clause 49 (1) (b) or subsection 74 (2) (transfer rights on wind up) by an order under the *Family Law Act, 1986* or by a domestic contract as defined in Part IV of that Act. Exemption for order or separation agreement
1986, c. 4

67.—(1) Money payable under a pension plan is exempt from execution, seizure or attachment. Exemption from execution, seizure or attachment

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity under section 43, 44, 49 or subsection 74 (2) is exempt from execution, seizure or attachment. Idem

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with section 43, 44, 49 or subsection 74 (2) is exempt from execution, seizure or attachment. Idem

(4) Notwithstanding subsection (1), payments under a pension or that result from a purchase or transfer under section 43, 44, clause 49 (1) (b) or subsection 74 (2) are subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario to a maximum of one-half the money payable. Order for support or maintenance

(5) Subsection (4) applies to orders for support or maintenance enforceable in Ontario whether made before or after the coming into force of this Act. Application of subs. (4)

68.—(1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer under section 43, 44, 49 or subsection 74 (2) to which a person is entitled is not capable of being commuted or surrendered during the person's life. Commutation or surrender

(2) A transaction that purports to commute or surrender such a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement is void. Void transaction

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension under section 50 (variation of payment to disabled person) or to a commutation of a benefit under section 51 (commuted value).

WINDING UP

Winding up

69.—(1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

Notice

(2) The administrator shall give written notice of proposal to wind up the pension plan to,

- (a) the Superintendent;
- (b) each member of the pension plan;
- (c) each former member of the pension plan;
- (d) each trade union that represents members of the pension plan;
- (e) the advisory committee of the pension plan; and
- (f) any other person entitled to a payment from the pension fund.

Notice
of partial
wind up

(3) In the case of a proposal to wind up only part of a pension plan, the administrator is not required to give written notice of the proposal to members, former members or other persons entitled to payment from the pension fund if they will not be affected by the proposed partial wind up.

Information

(4) The notice of proposal to wind up shall contain the information prescribed by the regulations.

Effective
date

(5) The effective date of the wind up shall not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits, or, in any other case, on the date notice is given to members.

Order by
Superin-
tendent

(6) The Superintendent by order may change the effective date of the wind up if the Superintendent is of the opinion that there are reasonable grounds for the change.

Winding up
order by
Superin-
tendent

70.—(1) The Superintendent by order may require the wind up of a pension plan in whole or in part if,

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;
- (f) all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person;
- (g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up in whole or in part;
- (h) in the case of a multi-employer pension plan,
 - (i) there is a significant reduction in the number of members, or
 - (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (i) any other prescribed event or prescribed circumstance occurs.

R.S.C. 1970,
c. B-3

(2) In an order under subsection (1), the Superintendent shall specify the effective date of the wind up, the persons or class or classes of persons to whom the administrator shall give notice of the order and the information that shall be given in the notice.

Date and
notice

Wind up
report

71.—(1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out,

- (a) the assets and liabilities of the pension plan;
- (b) the benefits to be provided under the pension plan to members, former members and other persons;
- (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- (d) such other information as is prescribed.

Payments
out of
pension
fund after
notice of
proposal to
wind up

(2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.

Application
of subs. (2)

(3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.

Approval

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent.

Refusal to
approve

(5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.

Rights and
benefits
on partial
wind up

(6) On the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.

Appointment
of
administrator
to wind up

72.—(1) If a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator fails to act, the Superintendent may act as or may appoint an administrator.

(2) The reasonable administration costs of the Superintendent or of the administrator appointed by the Superintendent may be paid out of the pension fund.

Costs of
adminis-
tration on
winding up

73.—(1) On the wind up of a pension plan in whole or in part, the administrator shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the pension plan, the options available to the person and any other prescribed information.

Notice of
entitlements

(2) If a person to whom notice is given under subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or shall be deemed to have elected to receive immediate payment of a pension benefit, if eligible therefor, or, if not eligible to receive immediate payment of a pension benefit, to receive a pension commencing at the earliest date mentioned in clause 75 (1) (b), and the administrator of the pension plan shall make payment in accordance with the election or deemed election.

Election

74.—(1) For the purpose of determining the amounts of pension benefits and any other benefits and entitlements on the winding up of a pension plan, in whole or in part,

Determi-
nation of
entitlements

- (a) the employment of each member of the pension plan affected by the winding up shall be deemed to have been terminated on the effective date of the wind up;
- (b) each member's pension benefits as of the effective date of the wind up shall be determined as if the member had satisfied all eligibility conditions for a deferred pension; and
- (c) provision shall be made for the rights under section 75.

(2) A person entitled to a pension benefit on the wind up of a pension plan, other than a person who is receiving a pension, is entitled to the rights under subsection 43 (1) (transfer) of a member who terminates employment and, for the purpose, subsection 43 (3) does not apply.

Transfer
rights on
wind up

75.—(1) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least fifty-five, at the effective date of the wind up of the pension plan in whole or in part, has the right to receive,

Combination
of age and
years of
employment

- (a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
- (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,
 - (i) the normal retirement date under the pension plan, or
 - (ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or
- (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

Part year

(2) In determining the combination of age plus employment or membership, one-twelfth credit shall be given for each month of age and for each month of continuous employment or membership at the effective date of the wind up.

Member for
ten years

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not wound up and if the membership of the member were continued shall be included in calculating the pension benefit under subsection (1) of a person who has at least ten years of continuous employment with the employer or has been a member of the pension plan for at least ten years.

Prorated
bridging
benefit

(4) For the purposes of subsection (3), if the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the bridging benefit shall be prorated by the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of pension benefits and a full bridging benefit under the pension plan if the pension plan were not wound up.

Notice of
termination
of
employment

(5) Membership in a pension plan that is wound up in whole or in part includes the period of notice of termination

of employment required under Part XII of the *Employment Standards Act*. R.S.O. 1980, c. 137

(6) Subsection (5) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment. Application of subs. (5)

(7) For the purposes of this section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer shall be deemed to have given the consent. Consent of employer

(8) This section and sections 74 (determination of entitlements), 85, 86 and 87 (guaranteed benefits) apply in respect of the wind up, in whole or in part, of a pension plan where the effective date of the wind up is on or after the 1st day of April, 1987. Application of section

(9) A person affected by a wind up who elects to receive a benefit under subsection (1) is not entitled to payment of any refund of contributions or interest under subsection 64 (3) or (4) (refunds). Refund

76.—(1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund, Liability of employer on wind up

(a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and

(b) an amount equal to the amount by which,

(i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Commission declares that the Guarantee Fund applies to the pension plan,

(ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and

(iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 40 (3) (50 per cent rule) and section 75,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario.

Payment

(2) The employer shall pay the moneys due under subsection (1) in the prescribed manner and at the prescribed times.

Pension fund continues subject to Act and regulations

77. The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until all the assets of the pension fund have been disbursed.

Insufficient pension fund

78. Subject to the application of the Guarantee Fund, where the moneys in a pension fund are not sufficient to pay all the pension benefits and other benefits on the wind up of the pension plan in whole or in part, the pension benefits and other benefits shall be reduced in the prescribed manner.

SURPLUS

Payment out of pension fund to employer

79.—(1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.

Application for payment

(2) An employer who applies to the Commission for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to,

- (a) each member and each former member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members of the pension plan;
- (c) any other individual who is receiving payments out of the pension fund; and
- (d) the advisory committee established in respect of the pension fund.


Representations

(3) A person to whom notice has been transmitted under subsection (2) may make written representations to the Commission with respect to the application within thirty days after receiving the notice.



Return of excess amount

(4) The Commission may consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund or of an amount paid by the employer that should have been paid out of the pension fund, but shall not consent

unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment or the payment occurred. 

80.—(1) The Commission shall not consent to payment of money that is surplus to the employer out of a continuing pension plan unless, Continuing pension plan

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or the applicant satisfies the Commission that the applicant is otherwise entitled to withdraw the surplus;
- (c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the employer's current service costs is retained in the pension fund as surplus;
- (d) where the members are not required to make contributions under the pension plan, the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,is retained in the pension fund as surplus;
- (e) where members are required to make contributions under the pension plan, all surplus attributable to contributions paid by members and the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

are retained in the pension fund as surplus; and

- (f) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Where no provision in pension plan

(2) A pension plan that does not provide for the withdrawal of surplus moneys while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus moneys accrued after the 31st day of December, 1986.

Application of subs. (2)

(3) Subsection (2) comes into force on the 1st day of January, 1989.

Wind up

(4) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

(a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;

(b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;

(c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and

(d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Idem

(5) A pension plan that does not provide for payment of surplus moneys on the wind up of the pension plan shall be construed to require that surplus moneys accrued after the 31st day of December, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members and any other persons entitled to payments under the pension plan on the date of the wind up.

Application of subs. (5)

(6) Subsection (5) comes into force on the 1st day of January, 1989.

Decision

(7) The Commission shall transmit its decision, together with written reasons therefor, to the applicant and to each person who made written representations to the Commission in accordance with subsection 79 (3).

(8) The Commission may attach such conditions and limitations to its consent under this section as the Commission considers necessary in the circumstances.

Conditions
and
limitations

(9) The *Statutory Powers Procedure Act* does not apply in respect of a decision made by the Commission under this section.

Application
of
R.S.O. 1980,
c. 484

(10) The Commission shall not consent to payment of money from surplus to the employer out of a continuing pension plan until such date as may be prescribed.

Interim
prohibition
to giving
consent

SALES, TRANSFERS AND NEW PLANS

81.—(1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

Continuation
of benefits
under succes-
sor employer

- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

Exception

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

Employment
deemed not
terminated

Transfer
on sale

(4) Where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the pension benefits provided under the employer's pension plan, no transfer of assets shall be made from the employer's pension fund to the pension fund of the plan provided by the successor employer without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

Consent by
Superin-
tendent

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the employer's pension plan or that does not meet the prescribed requirements and qualifications.

Order for
return

(6) The Superintendent by order may require the transferee to return to the pension fund, with interest, assets transferred without the prior consent required by subsection (4).

Enforcement


► (7) Subject to section 90 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.


Multi-
employer
pension
plan
R.S.O. 1980,
c. 288


► (8) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan, the administrator of the first pension plan shall transfer to the administrator of the new pension plan all the assets and liabilities respecting those members who have elected under section 43 to transfer their entitlement to the new pension plan and the administrator of the new pension plan shall accept the transfer as assets and liabilities of the new plan.

Idem

(9) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan and the members are not entitled to make an election under section 43, the administrator of the old pension plan shall transfer to the administrator of the new pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the new pension plan shall accept them as assets and liabilities, determined as prescribed, of the new plan.

(10) Subsections (8) and (9) do not apply where there is a reciprocal agreement respecting the pension plans.  Application of subs. (8), (9)

(11) In this section, “successor employer” means the person who acquires the business or the assets of the employer.  Definition

82.—(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.  Adoption of new pension plan


(2) The benefits under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits under the new pension plan. Continuation of benefits

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan. Application of subs. (2)

(4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions. Transfer of assets

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications. Consent by Superintendent

(6) The Superintendent by order may require the transferee to return to the pension fund assets, with interest calculated in the prescribed manner, transferred without the prior consent of the Superintendent or transferred contrary to a prescribed term or condition. Order

(7) Subject to section 90 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.  Enforcement

(8) No transfer of assets shall be made from one pension fund to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 43 or 81 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the Fund to fund

purpose, subsections (5) to (7) apply with necessary modifications. 

PENSION BENEFITS GUARANTEE FUND

Guarantee
Fund
continued

83.—(1) The Pension Benefits Guarantee Fund is continued.

Adminis-
tration

(2) The Commission is responsible for the administration of the Guarantee Fund including the investment of the assets of the Guarantee Fund.

Expenses

(3) The Commission may charge to the Guarantee Fund the reasonable expenses incurred by the Commission in the administration of the Guarantee Fund.

Loans to
Guarantee
Fund

(4) If at any time the amount standing to the credit of the Guarantee Fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Guarantee Fund on such terms and conditions as the Lieutenant Governor in Council directs.

Guarantee
Fund
declaration

84.—(1) The Commission, subject to section 91 (notice and representations), shall declare, in the circumstances mentioned in subsection (2), that the Guarantee Fund applies to a pension plan.


Conditions
precedent

(2) The Commission shall make the declaration if,

- (a) the pension plan is registered under this Act or is registered in a designated province to provide for the reciprocal application of this Act;
- (b) the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;
- (c) the pension plan is wound up in whole or in part; and
- (d) the Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied.

Guaranteed
benefits

85.—(1) Where the Guarantee Fund is declared by the Commission to apply to a pension plan, the following are guaranteed by the Guarantee Fund, subject to the limitations and qualifications as are set out in this Act or are prescribed:

1. Any pension in respect of employment in Ontario.
2. Any deferred pension in respect of employment in Ontario to which a former member is entitled, if the former member's employment or membership was terminated before the date on which this Act comes into force and the former member was at least forty-five years of age and had at least ten years of continuous employment with the employer, or was a member of the pension plan for a continuous period of at least ten years, at the date of termination of employment.
3. A percentage of any defined pension benefits in respect of employment in Ontario to which a member or former member is entitled under section 37 or 38 (deferred pension), or both, if the member's or former member's employment or membership was terminated on or after the date on which this Act comes into force, equal to 20 per cent if the combination of the member's or former member's age plus years of employment or membership in the pension plan equals fifty, plus an additional $\frac{2}{3}$ of 1 per cent for each additional one-twelfth credit of age and employment or membership to a maximum of 100 per cent.
4. All additional voluntary contributions, and the interest thereon, made by members or former members while employed in Ontario.
5. The minimum value of all required contributions made to the pension plan by a member or former member in respect of employment in Ontario plus interest.
6. That part of a deferred pension guaranteed under this subsection to which a former spouse of a member or of a former member is entitled under a domestic contract or an order under the *Family Law Act, 1986*. 1986, c. 4
7. Any pension to which a survivor of a former member is entitled under subsection 49 (1) (death before commencement of payment). 

(2) For the purpose of this section, where a member or former member has at least ten years of continuous employment with the employer, a deferred pension or a pension benefit includes bridging benefits.

Bridging
benefits

Part year

➡ (3) In determining the combination of age and membership or employment for subsection (1), one-twelfth credit shall be given for each full month of age and for each full month of continuous employment or membership as of the date of termination of employment.

Definition

(4) For the purpose of this section, “pension benefits” includes any benefits or options elected under section 75 (combination of age and years of employment). ⬆

Payments not guaranteed

86. The following are not guaranteed by the Guarantee Fund:

1. The payment of a pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of wind up.
2. Any increase to a pension or pension benefit or the value of a pension or pension benefit that became effective within three years before the date of wind up.
3. The amount of any pension or pension benefit, including any bridging supplement, in excess of \$1,000 per month or such greater amount as is prescribed by the regulations.
4. Pension benefits provided under a multi-employer pension plan.
5. Pension benefits provided under a pension plan that provides defined benefits, if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.
6. Pension benefits provided by prescribed pension plans or prescribed classes of pension plans.

Lien for payment out of Guarantee Fund

87.—(1) Where money is paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of a pension plan, the Commission has a lien and charge on the assets of the employer or employers who provided the pension plan.

Amount of lien

(2) The lien and charge is in an amount equal to the amount of the payment out of the Guarantee Fund plus interest thereon calculated at the rate and in the manner prescribed by the regulations.

(3) The lien and charge does not affect assets that are real property until a notice of the lien and charge that includes a description of the real property is registered in the proper land registry office, and the Commission may so register notice of the lien and charge.

Real
property

(4) The Commission is subrogated to the rights of the administrator of a pension plan in respect of which the Commission authorizes a payment from the Guarantee Fund in satisfaction of a pension, deferred pension, pension benefit or contribution guaranteed under section 85 (guaranteed benefits).

Subrogation

ORDERS

88.—(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 90 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

Order by
Superin-
tendent

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

Condition
precedent
to order

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

(3) In an order under this section, the Superintendent may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order.

Time

(4) An order under this section is not effective unless the reasons for the order are set out in the order.

Reasons
for order

89.—(1) The Commission, in the circumstances mentioned in subsection (2) and subject to section 91 (notice and representations), by order may require an administrator to take the action specified in subsection (3).

Order by
Commission

(2) The Commission may make an order under this section where the Commission is of the opinion,

Grounds
for order

- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate for a pension plan;
- (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan do not accord with generally accepted actuarial principles; or
- (c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan.

Contents
of order

(3) An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.

HEARING AND APPEAL

Notice of
proposal
to refuse
or revoke

90.—(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

Notice of
proposal to
make order

(2) Where the Superintendent proposes to make an order under,

- (a) subsection 43 (9) (repayment of money transferred out of pension fund);
- (b) subsection 44 (5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
- (c) subsection 81 (6) (transfer of assets to pension fund of successor employer);
- (d) subsection 82 (6) (transfer of assets to new pension fund); or
- (e) section 88 (administration of pension plan or contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any

other person to whom the Superintendent proposes to direct the order.

(3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.

Notice of
proposal re
membership

(4) Where the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or consent.

Notice of
proposal to
attach terms
and
conditions
to approval
or consent

(5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.

Notice of
proposed
wind up
order

(6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

Notice
requiring
hearing

(7) Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may carry out the proposal stated in the notice.

Power of
Superin-
tendent

(8) Where the person requires a hearing by the Commission in accordance with subsection (6), the Commission shall appoint a time for and hold the hearing.

Hearing

(9) At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the

Power of
Commission

Commission may substitute its opinion for that of the Superintendent.

Conditions (10) The Commission may attach such terms and conditions to its order or to the registration as the Commission considers proper to give effect to the purposes of this Act.

Parties (11) The Superintendent, the person who requires a hearing and such other persons as the Commission specifies are parties to the proceeding before the Commission under this section.

Opportunity to show compliance (12) A party to a hearing shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the registration of the pension plan.

Examination of documentary evidence (13) A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Release of documentary evidence (14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Notice of proposal by Commission **91.—**(1) Where the Commission proposes to consider,

- (a) making a declaration that the Guarantee Fund applies to a pension plan;
- (b) making an order requiring the administrator of a pension plan to take specific action in relation to a report in respect of the pension plan; or
- (c) refusing to consent to a refund of contributions under section 64 (refunds),

the Commission shall serve notice of the proposal together with written reasons therefor on the administrator of the pension plan.

Additional notices (2) The administrator shall transmit copies of the Commission's notice to such other persons or classes of persons or both as the Commission specifies in the notice to the administrator.

(3) A notice by the Commission under subsection (1) shall state that the administrator, the persons and the representatives and members of classes of persons specified in the notice are entitled to make written representations to the Commission within thirty days after service of the notice under that subsection.

Representations

(4) An individual who is entitled to make representations to the Commission under subsection (3) shall be afforded an opportunity, during the period of time when representations may be made, to examine any written or documentary evidence that will be produced or any report the contents of which will be considered by the Commission when the Commission considers its proposal.

Examination of documentary evidence

(5) The Commission shall transmit a copy of its decision, together with written reasons therefor, to the administrator, the employer and every other person who made representations to the Commission in accordance with subsection (3).

Notice of decision

(6) The *Statutory Powers Procedure Act* does not apply in respect of a declaration, refusal or order mentioned in subsection (1) by the Commission.

Application of R.S.O. 1980, c. 484

92.—(1) A party to a proceeding before the Commission under section 80, 90 or 91 may appeal to the Divisional Court from the decision or order of the Commission.

Appeal to court

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the prescribed fee, the Commission shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from.

Certified copy of record

93.—(1) Three members of the Commission constitute a quorum for the purposes of a proceeding before the Commission under section 90, and decisions in such proceedings require the vote of a majority of the members of the Commission present at the hearing in the proceeding.

Quorum and votes

(2) The Commission may sit in two or more panels simultaneously for the purposes of such proceedings.

Panels

(3) The head of the Commission shall assign the members of the Commission to its panels and may change an assignment at any time.

Assignment

(4) Where a proceeding is commenced before the Commission and the term of office on the Commission of a person sitting for the hearing expires or is terminated, other than for

Expiry of member's term of office

cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Commission for the purpose of completing the proceeding in the same manner as if his or her term of office had not expired or been terminated.

PENSION COMMISSION

Commission continued

94.—(1) The Pension Commission of Ontario is continued.

Composition

(2) The Commission shall be composed of not fewer than five and not more than nine members appointed by the Lieutenant Governor in Council.

Head and deputy head

(3) The Lieutenant Governor in Council shall appoint the head and the deputy head of the Commission from among the members of the Commission.

Term of office

(4) The members of the Commission shall be appointed for terms of not more than three years and may be reappointed for further terms of not more than three years.

Authority of deputy head

(5) If the head of the Commission is absent or if there is a vacancy in the office of head of the Commission, the deputy head shall act as and have all the powers of the head of the Commission.

Acting head

(6) If both the head of the Commission and the deputy head are absent or if there are vacancies in the offices of head of the Commission and deputy head, the member of the Commission designated by the members of the Commission shall act as and have the powers of the head of the Commission.

Vacancies

(7) The Lieutenant Governor in Council may fill any vacancy in the membership of the Commission or in the offices of head or deputy head of the Commission.

Quorum

(8) A majority of the members of the Commission, including the head or deputy head of the Commission, constitutes a quorum.

Employees
R.S.O. 1980,
c. 418

(9) Such employees as are necessary to carry out the business of the Commission shall be appointed under the *Public Service Act*.

Salary and expenses

(10) The members of the Commission shall be paid such remuneration and expenses as are fixed by the Lieutenant Governor in Council.

95.—(1) The office of Superintendent of Pensions is continued. Superintendent

(2) The Superintendent shall be appointed by the Commission. Appointment

(3) The Superintendent is the chief administrative officer of the Commission. Chief administrative officer

(4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission. Powers and duties

(5) The Superintendent may delegate in writing any power or duty of the Superintendent under this Act to any employee of the Commission, subject to the approval of the Commission and subject to any limitation or condition set out in the delegation. Delegation of powers and duties

96.—(1) The Commission may, subject to the approval of the Lieutenant Governor in Council, Reciprocal agreements

- (a) enter into agreements with the authorized representatives of another province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;
- (b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Commission as the Commission may require; and
- (c) delegate to a pension supervisory authority or the government of a designated province such functions and powers under this Act as the Commission may determine and the Commission may accept similar delegations of functions and powers from a pension supervisory authority or the government of a designated province.

(2) Where a pension plan required to be registered in Ontario is registered in a designated jurisdiction, the Commission by order may limit the application of this Act and the regulations to the pension plan and authorize the application of the law of the designated jurisdiction in respect of the pension plan. Applicable law

Duty of
Commission**97.** It is the duty of the Commission,

- (a) to administer this Act and the regulations;
- (b) to promote the establishment, extension and improvement of pension plans throughout Ontario;
- (c) to advise the Minister in respect of the business of the Commission; and
- (d) to make recommendations to the Minister in respect of pension plans.

Research

98.—(1) It is a function of the Commission to conduct surveys and research programs and to compile statistical information related to pensions and pension plans.

Provision of
information

(2) The Commission may request an employer or an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such persons shall comply with the request within a reasonable period of time.

Confidenti-
ality

(3) The Commission shall use the information only for the purpose of compiling the statistical information.

Information

99.—(1) The Superintendent may require an employer, an administrator or any other person to supply to the Commission or the Superintendent such information in such form as is acceptable to the Superintendent and within such time limits as specified for the purpose of ascertaining whether or not this Act and the regulations are being complied with.

Idem


(2) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Superintendent or other person designated by the Superintendent.



Appraisal

(3) The Superintendent may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers or the Superintendent may obtain the appraisal at the expense of the administrator.

Time

(4) The administrator shall deliver the appraisal to the Superintendent within the period of time specified by the Superintendent in the requirement or within such other period of time as the Superintendent may specify. 

100. Every person entrusted by the Commission with the custody or control of money in the course of employment shall give security in the manner and form provided by the *Public Officers Act*.

Security

R.S.O. 1980,
c. 415

101. No member of the Commission or of the staff of the Commission is personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Act or the regulations or for alleged neglect or default in the execution in good faith of such a duty or authority.

Liability of
members and
employees of
Commission

102. The Provincial Auditor shall examine annually the accounts and financial transactions of the Commission.

Audit

103.—(1) The Commission shall report annually to the Minister on the business of the Commission.

Annual
report

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Idem

GENERAL

104. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefits under this Act.

Pension
agency

105. Every pension plan that was registered and that continued to be qualified for registration under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this Act, shall be deemed to be registered upon the coming into force of this Act.

Transitional

106. The Commission or the Superintendent may extend any time limit under this Act or the regulations before or after the expiration of the time if satisfied that there are reasonable grounds for applying for the extension, and may give such directions as the Commission or the Superintendent considers proper consequent upon the extension.

Extension
of time

107.—(1) The persons referred to in subsections (3) to (5) and (8) to (10) are the following:

Interpre-
tation,
persons

1. The Superintendent.

2. Any person designated by the Superintendent or the Commission.

Interpre-
tation,
purposes

- (2) The purposes mentioned in subsections (3) to (5) and (10) are the following:

1. The administration of this Act and the regulations.
2. The administration of the Guarantee Fund.
3. The enforcement of any section of this Act or the regulations.
4. The exercise of a power or the carrying out of a duty under this Act or the regulations.
5. The carrying out of an order made under this Act.

Entry

- (3) For a purpose mentioned in subsection (2), a person mentioned in subsection (1) may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to a pension plan or pension fund.

Examinations

- (4) A person mentioned in subsection (1) may make examinations, investigations and inquiries and may require the production of any book, paper, document or thing related to a pension plan or pension fund.

Samples or
extracts

- (5) A person mentioned in subsection (1) may make, take and remove or require the making, taking and removal of copies or extracts related to an examination, investigation or inquiry for a purpose mentioned in subsection (2).

Reasonable
times

- (6) The authority under subsections (3) to (5) shall be exercised only at reasonable times.

Private
residence

- (7) Subsection (3) is not authority to enter a private residence without the consent of the occupier.

Removal of
books, etc.,
for copying

- (8) A person mentioned in subsection (1) who is making an examination, investigation or inquiry may, upon giving a receipt therefor, remove any books, papers, documents or things relating to the subject-matter of the examination, investigation or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out with reasonable dispatch and the books, papers, documents or things shall be returned forthwith after the copying is completed.

(9) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by a person mentioned in subsection (1) is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would have been admissible. Copies

(10) If an occupier of premises,

Application
for warrant

- (a) denies entry or access to, through or over the premises to a person mentioned in subsection (1);
- (b) instructs a person mentioned in subsection (1) to leave the premises;
- (c) obstructs a person mentioned in subsection (1) who is acting for a purpose mentioned in subsection (2);
- (d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a purpose mentioned in subsection (2),

a person mentioned in subsection (1) may apply to a justice of the peace for an inspection order under section 109.

(11) A person exercising a power under this section shall provide identification at the time of entry. Identification

108.—(1) No person shall hinder or obstruct a person mentioned in subsection 107 (1) who is lawfully carrying out a duty under this Act. Obstruction

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1). Private
residence

109.—(1) Where a justice of the peace is satisfied on evidence upon oath,

Order by
justice of
the peace

- (a) that there is reasonable and probable ground for believing that it is necessary,
 - (i) to enter and have access to, through and over any premises,
 - (ii) to make examinations, investigations or inquiries, and

(iii) to make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things, for a purpose mentioned in subsection 107 (2); and

(b) that a person mentioned in subsection 107 (1),

(i) has been denied entry to the premises,

(ii) has reasonable grounds to believe that entry to the premises will be denied,

(iii) has been instructed to leave the premises,

(iv) has been obstructed, or

(v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing a person mentioned in subsection 107 (1) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as they call upon to assist them.

Execution
of order

(2) An inspection order issued under this section shall be executed between 6 a.m. and 9 p.m. standard time unless the justice of the peace otherwise authorizes in the order.

Expiry of
order

(3) An inspection order issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the inspection order is issued.

Ex parte
application

(4) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises.

Offence

110.—(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Idem

(2) Every person who contravenes an order made under this Act is guilty of an offence.

111.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$25,000. Penalty

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed is \$100,000 and not as provided in subsection (1). Corporation

(3) Where a corporation is guilty of an offence under this Act, an officer, official, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to a fine of not more than \$25,000. Officers,
etc.

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company. Order for
payment

(5) An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court. Enforcement

(6) No proceeding under this Act shall be commenced after five years after the date when the subject-matter of the proceeding occurred or is alleged to have occurred. Time limit

112. Where a provision of this Act or the regulations or an order or approval of the Commission or the Superintendent under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the Commission or of the administrator of a pension plan affected by the contravention. Power to
restrain

113.—(1) Any notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at his or her last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the seventh day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive the notice, order or other document, or did not receive it until a later

Deemed
service

date, through absence, accident, illness or other cause beyond his or her control.



General
notice

(3) Where the Superintendent is of the opinion that because the persons who are to be given any notice or document under this Act or the regulations are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Superintendent may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Superintendent may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is given.



Time for
actions by
administrator

114. An administrator of a pension plan who is required to take an action under this Act or the regulations shall take the action within the prescribed period of time.

Conflict

115. In the event of a conflict between this Act and any other Act, this Act prevails unless the other Act states that it is to prevail over the *Pension Benefits Act, 1987*.

1987, c. ...

Regulations

116.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) prescribing the times for filing or the last dates for filing of documents that are required to be filed under this Act;
- (c) prescribing reports that shall be submitted to the Commission, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared;
- (d) prescribing pension benefits that are not guaranteed by the Guarantee Fund;
- (e) prescribing assessments for the purposes of the Guarantee Fund and prescribing the classes of employers that shall pay such assessments;
- (f) prescribing procedures that shall govern the appointments of members of pension committees and advisory committees;



- (g) prescribing procedures that shall govern the establishment of advisory committees and the appointments of members of advisory committees;
- (h) prescribing fees that shall be paid for copies of documents provided by the Commission;
- (i) prescribing the methods of calculating the values of assets and liabilities of pension funds;
- (j) prescribing criteria that must be complied with before any surplus may be paid out of a pension fund;
- (k) prescribing the rate or the method of determining the rate at which an employer shall pay moneys due from the employer under this Act on the winding up of a pension plan, and prescribing the manner of payment and to whom the payments shall be made;
- (l) regulating or prohibiting the investment of moneys from pension funds and prescribing investments or classes of investments in which such moneys may be invested;
- (m) prescribing requirements for retirement savings contracts and life annuity contracts between members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made, and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;
- (n) prescribing the rate of interest and the method of calculating interest payable under this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;
- (o) prescribing forms and providing for their use;
- (p) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served shall be given, transmitted, filed or served;
- (q) prescribing requirements that shall be complied with in the administration of a pension plan;

(r) prescribing records that shall be kept by the administrator of a pension plan and the period of time for which such records shall be retained by the administrator;

(s) requiring the audit of pension plans or classes of pension plans and pension funds and classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;

(t) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable to employment before the date on which this Act comes into force or that is attributable to employment after the date on which this Act comes into force;

(u) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada);

(v) governing the wind up of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind up, including priorities in allocation of assets;

(w) governing the receiving, holding and disbursing of pension benefits by any agency established or designated under this Act;

(x) exempting pension plans, pension funds, employees, administrators or other persons from the application of this Act or the regulations or from any section of this Act or the regulations.

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

Scope of
regulations

(2) A regulation may be general or particular in its application and may be limited as to time or place or both.

Adoption of
codes in
regulations

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with a code, formula, standard or procedure so adopted.

Terms,
conditions,
qualifications,
requirements

(4) Any provision of a regulation may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation.

117. The *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980 and the *Pension Benefits Amendment Act, 1983*, being chapter 2, are repealed. Repeals

118. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

119. The short title of this Act is the *Pension Benefits Act*, 1987. Short title

Bill 170

(Chapter 35
Statutes of Ontario, 1987)



An Act to revise the Pension Benefits Act

The Hon. M. Kwinter
Minister of Financial Institutions

<i>1st Reading</i>	December 9th, 1986
<i>2nd Reading</i>	February 10th, 1987
<i>3rd Reading</i>	June 25th, 1987
<i>Royal Assent</i>	June 29th, 1987

Bill 170

1987

An Act to revise the Pension Benefits Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond

any amount that the member is required to contribute, but does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund;

“administrator” means the person or persons that administer the pension plan;

“assets”, in relation to an employer, means assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

“bridging benefit” means a periodic payment provided under a pension plan to a former member of the pension plan for a temporary period of time after retirement for the purpose of supplementing the former member’s pension benefit until the former member is eligible to receive benefits under the *Old Age Security Act* (Canada) or is either eligible for or commences to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*;

R.S.C. 1970,
cc. O-6, C-5

R.S.Q. 1977,
c. R-9

“certified copy” means a copy certified to be a true copy;

“collective agreement” has the same meaning as in the *Labour Relations Act*;

R.S.O. 1980,
c. 228

“Commission” means the Pension Commission of Ontario;

“commuted value” means the value calculated in the prescribed manner and as of a fixed date of a pension, a deferred pension, a pension benefit or an ancillary benefit;

“continuous”, in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of lay-off from employment;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan;

“defined benefit” means a pension benefit other than a defined contribution benefit;

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis;

“designated province” means a province or territory of Canada that is prescribed by the regulations as a province or territory in which there is in force legislation substantially similar to this Act;

“employee” means a natural person who is employed by an employer;

“employer”, in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning;

“file” means file with the Superintendent;

“former member” means a person who has terminated employment or membership in a pension plan, and,

- (a) is entitled to a deferred pension payable from the pension fund,
- (b) is in receipt of a pension payable from the pension fund,
- (c) is entitled to commence receiving payment of pension benefits from the pension fund within one year after termination of employment or membership, or
- (d) is entitled to receive any other payment from the pension fund;

“Guarantee Fund” means the Pension Benefits Guarantee Fund continued by this Act;

“insurance company” means a corporation authorized to undertake life insurance in Canada;

“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and his or her spouse and thereafter during the life of the survivor of them;

“member” means a member of the pension plan;

“Minister” means the member of the Executive Council designated by the Lieutenant Governor in Council for the purposes of this Act;

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*, 1982; 1982, c. 4

“normal retirement date” means the date or age specified in the pension plan as the normal retirement date of members;

“partial wind up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;

“participating employer”, in relation to a multi-employer pension plan, means an employer required to make contributions to the multi-employer pension plan;

“pension” means a pension benefit that is in payment;

“pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member or former member during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan or to which any other person is entitled upon the death of a member or former member;

“pension committee” means a committee that is the administrator of a pension plan;

“pension fund” means the fund maintained to provide benefits under or related to the pension plan;

“pension plan” means a plan organized and administered to provide pensions for employees, but does not include,

- (a) an employees’ profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),

R.S.C. 1952,
c. 148

- (b) a plan to provide a retiring allowance as defined in subsection 248 (1) of the *Income Tax Act* (Canada),
- (c) a plan under which all pension benefits are provided by contributions made by members, or
- (d) any other prescribed type of plan;

“prescribed” means prescribed by the regulations;

“qualification date” means, in respect of Ontario, the 1st day of January, 1965, and, in respect of a designated province, the date on which under the law of the designated province a pension plan must be registered by the proper authority in the designated province;

“reciprocal transfer agreement” means an agreement related to two or more pension plans that provides for the transfer of moneys or credits for employment or both in respect of individual members;

“registration” means registration under this Act;

“regulations” means regulations made under this Act;

“spouse” means either of a man and woman who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act, 1986*;

1986, c. 4

“Superintendent” means Superintendent of Pensions;

“surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

“termination”, in relation to employment, includes retirement and death;

- “trade union” has the same meaning as in the *Labour Relations Act*;

“wind up” means the termination of a pension plan and the distribution of the assets of the pension fund;

“Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan*.
- R.S.O. 1980, c. 228

R.S.C. 1970, c. C-5

APPLICATION

2. This Act binds the Crown.

3. This Act applies to every pension plan that is provided for persons employed in Ontario.

4.—(1) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his or her employer is located and to which the person is required to report for work.

(2) A person who is not required to report for work at an establishment of his or her employer shall be deemed to be employed in the province in which is located the establishment of his or her employer from which the person’s remuneration is paid.

5. The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations.
- Crown bound

Employees in Ontario

Place of employment

Idem

Greater pension benefits

REGISTRATION AND ADMINISTRATION

- 6.—(1) No person shall administer a pension plan unless a certificate of registration or an acknowledgment of application for registration of the pension plan has been issued by the Superintendent.

(2) Subsection (1) does not apply to prevent administration during the first ninety days after the establishment of the pension plan.

7.—(1) No person shall administer a pension plan if registration of the pension plan has been refused or revoked by the Superintendent.

(2) Subsection (1) does not apply to prevent administration for the purpose of wind up of a pension plan.
- Prohibition of administration of unregistered pension plan

Application of subs. (1)

Refusal or revocation

Exception

Adminis-
trator

8.—(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,

- (a) the employer or employers;
- (b) a pension committee composed of one or more representatives of,
 - (i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and
 - (ii) members of the pension plan;
- (c) a pension committee composed of representatives of members of the pension plan;
- (d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;
- (e) If the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; or
- (f) a board, agency or commission made responsible by an Act of the Legislature for the administration of the pension plan.

Additional
members

(2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

Affiliate
1982, c. 4

(3) For the purpose of clause (1) (b), “employer” includes “affiliate” as defined in the *Business Corporations Act, 1982*, if the employer is a body corporate.

Application
for
registration

9.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is established, for registration of the pension plan.

(2) An application for registration shall be made by paying the prescribed fee to the Commission and filing,

Requirements
for
registration

- (a) a completed application in the prescribed form;
- (b) certified copies of the documents that create and support the pension plan;
- (c) certified copies of the documents that create and support the pension fund;
- (d) a certified copy of any reciprocal transfer agreement related to the pension plan;
- (e) a certified copy of the explanations and other information provided under subsection 26 (1); and
- (f) any other prescribed documents.

(3) For the purpose of subsection (2), “document” includes “collective agreement”.

Collective
agreement

10.—(1) The documents that create and support a pension plan shall set out the following information:

Contents of
pension plan

- 1. The method of appointment and the details of appointment of the administrator of the pension plan.
- 2. The conditions for membership in the pension plan.
- 3. The benefits and rights that are to accrue upon termination of employment, termination of membership, retirement or death.
- 4. The normal retirement date under the pension plan.
- 5. The requirements for entitlement under the pension plan to any pension benefit or ancillary benefit.
- 6. The contributions or the method of calculating the contributions required by the pension plan.
- 7. The method of determining benefits payable under the pension plan.
- 8. The method of calculating interest to be credited to contributions under the pension plan.

9. The mechanism for payment of the cost of administration of the pension plan and pension fund.
10. The mechanism for establishing and maintaining the pension fund.
11. The treatment of surplus during the continuation of the pension plan and on the wind up of the pension plan.
12. The obligation of the administrator to provide members with information and documents required to be disclosed under this Act and the regulations.
13. The method of allocation of the assets of the pension plan on windup.
14. Particulars of any predecessor pension plan under which members of the pension plan may be entitled to pension benefits.
15. Any other prescribed information related to the pension plan or pension fund or both.

Multi-
employer
pension plan

(2) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan.

Gradual and
uniform
accrual of
pension
benefits

11.—(1) A pension plan is not eligible for registration unless it provides for the accrual of pension benefits in a gradual and uniform manner.

Variable
contributions
or pension
benefits

(2) A pension plan is not eligible for registration if the formula for computation of the employer's contributions to the pension fund or the pension benefit provided under the pension plan is variable at the discretion of the employer.

Variable
deferred
profit-sharing

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits is not eligible for registration if the formula governing allocation of contributions to the pension fund and profits among members of the plan is variable at the discretion of the employer.

Exception

(4) Notwithstanding subsections (1), (2) and (3), the Superintendent may register a pension plan if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members.

12.—(1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

Application
for
registration
of
amendment

(2) An application for registration of an amendment shall be made by paying the prescribed fee to the Commission and filing,

Requirements
for
registration

- (a) a certified copy of the amending document;
- (b) certified copies of any other prescribed documents; and
- (c) any other prescribed information.

(3) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund.

Filing of
changes

13.—(1) An amendment to a pension plan is not effective until an application for registration of the amendment is made in accordance with this Act and the regulations.

When
amendment
becomes
effective

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered.

Retroactive
amendment

14.—(1) An amendment to a pension plan is void if the amendment purports to reduce,

Reduction
of benefits

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

(2) Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Application
of subs. (1)

Idem

(3) Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

Acknowledgment of application for registration

15. The Superintendent shall issue an acknowledgment of application for registration of a pension plan within thirty days after receiving an application for the registration that complies with this Act and the regulations.

Issuance of certificate of registration

16. The Superintendent shall issue a certificate of registration for each pension plan registered under this Act.

Issuance of notice of registration

17. The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act.

Refusal or revocation of registration

18.—(1) The Superintendent may,

- (a) refuse to register a pension plan that does not comply with this Act and the regulations;
- (b) revoke the registration of a pension plan that does not comply with this Act and the regulations;
- (c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;
- (d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;
- (e) revoke the registration of an amendment that does not comply with this Act and the regulations.

Application of subs. (1)

(2) The authority of the Superintendent under subsection (1) is subject to the right to a hearing under section 90.

Effect of refusal or revocation

(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.

Idem

(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.

(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations.

Wind up

19.—(1) Every employer who maintains a pension plan on the date this Act comes into force shall amend the pension plan to conform with this Act and the regulations within two years after the date this Act comes into force.

Conforming amendment

(2) If a pension plan is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is in effect on the date this section comes into force, the parties to the collective agreement or arbitration award shall amend the pension plan to conform to this Act and the regulations not later than the earlier of,

Exception

R.S.O. 1980,
c. 228

- (a) the date that is three years after the date on which this section comes into force; or
- (b) the date that is two years after the date on which this section comes into force, where the collective agreement or arbitration award expires within the two-year period.

(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that requires a provision contrary to this Act or the regulations and that is the subject of an application for registration submitted after this Act comes into force, if the collective agreement was entered into or the arbitration award was made before this Act comes into force and the pension plan would have been eligible for registration under the *Pension Benefits Act*.

Registration

R.S.O. 1980,
c. 373

(4) Subsection (2) applies to a pension plan referred to in subsection (3).

Application
of subs. (2)

20.—(1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

Duty of
administrator

(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.

Application
of subs. (1)

(3) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,

Idem

- (a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and
- (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

Application
of subs. (3)

(4) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations.

Idem,
amendment

(5) The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment.

Adminis-
trator's
annual
information
return

21.—(1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the prescribed form and shall pay the prescribed filing fee.

Additional
reports

(2) The administrator of a pension plan shall file additional reports at the times and containing the information prescribed by the regulations.

Reciprocal
transfer
agreement

22. An administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan.

Care,
diligence
and skill

23.—(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special
knowledge
and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of his or her profession, business or calling, ought to possess.

Member of
pension
committee,
etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit his or her interest to conflict with his or her duties and powers in respect of the pension fund.

Conflict of interest

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Employment of agent

(6) No person other than a prescribed person shall be a trustee of a pension fund.

Trustee of pension fund

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Responsibility for agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Employee or agent

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

Benefit by administrator

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Member of pension committee, etc.

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan.

Payment to agent

24. An employer shall provide to the administrator of the pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations.

Information from employer

Advisory
committee

25.—(1) The members and former members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee.

Representa-
tion

(2) Each class of employees that is represented in the pension plan is entitled to appoint at least one representative to the advisory committee established under subsection (1).

Idem, former
members

(3) The former members of the pension plan are entitled to appoint one representative to the advisory committee established under subsection (1).

Purposes

(4) The purposes of an advisory committee are,

- (a) to monitor the administration of the pension plan;
- (b) to make recommendations to the administrator respecting the administration of the pension plan; and
- (c) to promote awareness and understanding of the pension plan on the part of members of the pension plan and persons receiving pension benefits under the pension plan.

Examination
of records

(5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without the person's prior consent.

Application
of subs. (1)

(6) Subsection (1) does not apply,

- (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; or
- (b) in respect of a multi-employer pension plan established pursuant to a collective agreement.

Adminis-
trator
to provide
information

(7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee.

DISCLOSURE OF INFORMATION

26.—(1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member of the pension plan, Information from administrator

- (a) an explanation of the provisions of the plan that apply to the person;
- (b) an explanation of the person's rights and obligations in respect of the pension plan; and
- (c) any other information prescribed by the regulations.

(2) The administrator shall provide the information mentioned in subsection (1), Time

- (a) to each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;
- (b) to a person who is likely to become eligible to become a member of the pension plan, within the prescribed period of time before the date on which the person is likely to become eligible;
- (c) to each person who becomes eligible to become a member of the pension plan upon becoming employed by the employer, within the prescribed period of time after the date on which the person becomes so employed.

(3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection. Information from employer

27.—(1) If the administrator of a pension plan applies for registration of an amendment to the pension plan that would result in a reduction of pension benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund, the Superintendent shall require the administrator to transmit to such persons as the Superintendent may specify a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Superintendent, and the administrator shall provide to the Superintendent a copy of the notice and Notice of proposed amendment

shall certify to the Superintendent the date on which the last such notice was transmitted.

Registration

(2) If the Superintendent has required the administrator to transmit notices under subsection (1), the Superintendent shall not register an amendment mentioned in that subsection before the expiration of forty-five days after the date certified to the Superintendent under that subsection, but after the expiration of the forty-five day period the Superintendent may register the amendment with such changes as are requested in writing by the administrator.

Notice after registration

(3) Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, former member or other person entitled to payment from the pension fund who is affected by the amendment.

Order dispensing with notice

(4) The Superintendent need not require the transmittal of notices under subsection (1) or by order may dispense with the notice required by subsection (3), or both,

- (a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;
- (b) if the amendment has been agreed to by a trade union that represents the members; or
- (c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

Notice to trade union

(5) Where a proposed amendment affects members or former members represented by a trade union that is a party to a collective agreement filed as a document that creates or supports a pension plan, the administrator shall transmit to the trade union the written notice mentioned in subsection (1).

Annual statement of pension benefits

28. The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits.

Statement of benefits

29.—(1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a

member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.

(2) Subsection (1) applies in respect of a multi-employer pension plan where a member ceases to be a member, but does not apply where a member terminates employment with an employer but continues to be a member.

30.—(1) On written request, the administrator of a pension plan shall make available the prescribed documents and information in respect of the pension plan and the pension fund for inspection without charge by,

- (a) a member;
- (b) a former member;
- (c) the spouse of a member or former member;
- (d) any other person entitled to pension benefits under the pension plan;
- (e) an agent authorized in writing by a person mentioned in clause (a), (b), (c) or (d); or
- (f) a representative of a trade union that represents members of the pension plan.

(2) The administrator shall make the prescribed documents and information available,

- (a) for a member, at the premises of the employer where the member is employed;
- (b) for a former member, at the premises where the former member was employed; or
- (c) for a member, former member or any other person, at such other location as may be agreed upon by the administrator and the member, former member or other person making the request.

(3) The administrator shall permit the person making the inspection to make extracts from or to copy the prescribed documents and information.

Idem (4) On request, the administrator shall provide the person making the inspection with copies of any of the prescribed documents or information upon payment to the administrator of a reasonable fee.

Limitation (5) A member, a former member, a spouse, an other person, an agent or a trade union by a representative is entitled to make an inspection under subsection (1) not more than once in a calendar year.

Inspection of filed documents **31.** The individuals mentioned in clauses 30 (1) (a) to (f) are entitled to inspect at the offices of the Commission during business hours of the Commission the documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund, and are entitled to copies of the documents upon payment of the prescribed fees.

MEMBERSHIP

Eligibility for membership **32.—**(1) Every employee of a class of employees for whom a pension plan is established is eligible to be a member of the pension plan.

Full-time employment (2) An employee in a class of employees for whom a pension plan is maintained is entitled to become a member of the pension plan upon application at any time after completing twenty-four months of continuous full-time employment.

Part-time employment (3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer, with the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings; or

(b) 700 hours of employment with the employer,

in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan.

Multi-employer pension plan (4) A multi-employer pension plan may require not more than the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings with one or more of the participating employers; or

- (b) 700 hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan.

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. Approval

33. A member of a pension plan who is employed continuously on a less than full-time basis does not cease to be a member by reason only that he or she has earnings of less than 35 per cent of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than 700 hours in a calendar year. Loss of membership

34.—(1) Where there is a dispute as to whether or not an employee is a member of a class of employees for whom a pension plan is established or maintained, the Superintendent, subject to section 90, by order may require the administrator to accept the employee as a member. Dispute as to member of class of employees

(2) The Superintendent may make the order if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the class. Ground for order

35. An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment. Separate pension plan

RETIREMENT AND VESTING

36.—(1) The normal retirement date under a pension plan submitted for registration after the date this Act comes into force shall not be later than one year after the attainment of sixty-five years of age. Normal retirement date

(2) Every pension plan registered or submitted for registration before the date on which this Act comes into force shall be deemed to specify a normal retirement date in respect of Transitional

pension benefits that accrue after that date that is not later than one year after attainment of sixty-five years of age, unless the pension plan specifies an earlier retirement date.

Right to
pension

(3) A member of a pension plan who continues employment and membership in the pension plan after attaining the age that is the normal retirement date under the pension plan is entitled on retirement from employment to payment of the pension benefits to which the member would have been entitled had the member retired from employment or terminated membership in the pension plan on attaining the normal retirement date and any additional pension benefits accrued under the pension plan that result from the member's employment after the normal retirement date.

Continuation
after normal
retirement
date

(4) A member of a pension plan who continues employment after attaining the age that is the normal retirement date under the pension plan and who is not receiving a pension under the pension plan is entitled to continue membership in the pension plan and has the right to continue to accrue pension benefits under the pension plan subject to any terms of the pension plan,

- (a) fixing a maximum number of years of employment or membership that can be taken into account for purposes of determining a pension benefit; or
- (b) fixing a maximum amount of the pension benefit.

Deferred
pension
for past
service

37.—(1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Qualifications

(2) The qualifications are,

- (a) that the member must have been employed by the employer, or have been a member of the pension plan, for a continuous period of at least ten years;
- (b) that the member must have reached the age of forty-five years; and
- (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on the 31st day of December, 1986 in respect of employment before

the 1st day of January, 1987 in Ontario or in a designated province,

- (a) under the terms of the pension plan, with respect to employment on or after the qualification date;
- (b) by an amendment to the pension plan made on or after the qualification date; and
- (c) by the creation of a new pension plan on or after the qualification date.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Application
of
subss. (1-3)

38.—(1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Deferred
pension

(2) The qualifications are,

Qualifications

- (a) that the member must be a member on or after the date on which this Act comes into force;
- (b) that the member must be a member for a continuous period of at least twenty-four months; and
- (c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

Amount

- (a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date if the qualification date is later than the 31st day of December, 1986;
- (b) under any amendment made to the pension plan after the 31st day of December, 1986; and
- (c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Application
of
subss. (1-3)

Termination
by member

39.—(1) A person who is,

- (a) a member of a multi-employer pension plan;
- (b) a member of a pension plan who is employed by the employer on a less than full-time basis; or
- (c) a member of a pension plan who has been laid off from employment by the employer,

is entitled to terminate his or her membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period of time as is specified in the pension plan.

Effect of
termination

(2) For the purpose of determining benefits under this Act, a person mentioned in subsection (1) who terminates his or her membership in a pension plan shall be deemed to have terminated his or her employment.

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans.

Determini-
nation of
entitlement

(4) For the purpose of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan shall be deemed not to have terminated employment until the member terminates membership in the pension plan.

Certification
of new
bargaining
agent
R.S.O. 1980,
c. 228

(5) Where a member of a multi-employer pension plan is represented by a trade union, which, in accordance with section 56 of the *Labour Relations Act*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate membership in the first plan.

Application
of subs. (5)

(6) Subsection (5) does not apply where there is a reciprocal agreement respecting the two pension plans.

BENEFITS

Value of
deferred
pension

40.—(1) If the commuted value of a former member's pension or deferred pension accrued in respect of employment before the 1st day of January, 1987 is less than the value of the contributions the former member was required to make

under the pension plan before that date plus interest credited to the contributions, the former member is entitled to have the commuted value of the pension or deferred pension increased so that the commuted value is equal to the value of the contributions plus interest.

(2) An increase in the value of the pension or deferred pension in respect of employment before the 1st day of January, 1987 that results from an amendment to the pension plan made on or after that date may be included in calculating the commuted value of the pension or deferred pension for the purposes of subsection (1).

Effect of amendment

(3) A former member's contributions to a pension plan made on or after the 1st day of January, 1987 and the interest on the contributions shall not be used to provide more than 50 per cent of the commuted value of a pension or deferred pension in respect of contributory benefits accrued after that date to which the member is entitled under the pension plan on termination of membership or employment.

50 per cent rule

(4) A former member who is entitled to a pension or deferred pension on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the former member's contributions under the pension plan made on or after the 1st day of January, 1987 and the interest on the contributions exceed one-half of the commuted value of the former member's pension or deferred pension in respect of the contributory benefit accrued after that date.

Entitlement to excess amount

(5) The following may be excluded in determining that part of the commuted value of a pension or deferred pension to which subsections (3) and (4) apply:

Exclusions

1. Defined contribution benefits.
2. Benefits that result from additional voluntary contributions.
3. In the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions.
4. Any other benefits prescribed for the purposes of this subsection.

Matters that
may be
included

(6) The following may be included by the administrator of the pension plan in calculating a member's contributory benefit for the purposes of subsection (3):

1. Ancillary benefits related to employment on or after the 1st day of January, 1987.
2. Increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the 1st day of January, 1987 but that are not included in calculating commuted value under subsection (2).
3. Pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the 1st day of January, 1987.

Ancillary
benefits

41.—(1) A pension plan may provide the following ancillary benefits:

1. Disability benefits.
2. Death benefits in excess of those provided in section 49 (pre-retirement death benefit).
3. Bridging benefits.
4. Supplemental benefits, other than bridging benefits, payable for a temporary period of time.
5. Early retirement options and benefits in excess of those provided by section 42 (early retirement option).
6. Postponed retirement options and benefits in excess of those referred to in subsection 36 (4).
7. Any prescribed ancillary benefit.

Use in
calculating
pension
benefit

(2) An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit.

Consent of
employer

(3) For the purposes of subsection (2) and clause 14 (1) (c), where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member

or former member has met all other eligibility requirements, the employer shall be deemed to have given the consent to the member or former member.

42.—(1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she, Early retirement option

- (a) terminated employment on or after the date on which this Act comes into force;
- (b) is entitled to a deferred pension under this Act; and
- (c) is within ten years of attaining the normal retirement date.

(2) A member who is within ten years of attaining the normal retirement date and who would be entitled to a deferred pension on termination of employment with the employer is entitled upon termination of the employment or on the wind up of the pension plan in whole or in part to receive an early retirement pension under the pension plan. Idem

(3) The commuted value of a member's early retirement pension must be not less than the commuted value of the member's pension benefit under the pension plan. Committed value

(4) The commuted value of a former member's early retirement pension must be not less than the commuted value of the former member's deferred pension benefit under the pension plan. Idem, former member

(5) The member or former member is entitled to require the commencement of payment of the early retirement pension at any time within the ten year period mentioned in subsection (1) or (2). Payment

(6) An election under subsection (1) or (2) shall be made in writing, signed by the member or former member and delivered to the administrator of the pension plan. Election

43.—(1) A former member of a pension plan who, on or after the date on which this Act comes into force, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension, Transfer

- (a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
- (b) into a prescribed retirement savings arrangement; or
- (c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.

Limitation (2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

Application of subs. (1) (3) Subsection (1) does not apply to a former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan or under section 42, unless the pension plan provides such an entitlement.

Direction (4) A former member may exercise his or her entitlement under subsection (1) by delivering to the administrator within the prescribed period of time a direction in a form supplied by the Superintendent.

Compliance with direction (5) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

Terms of arrangement or deferred annuity (6) The administrator shall not make payment,

- (a) under clause (1) (b) unless the retirement savings arrangement meets the requirements prescribed by the regulations; or
- (b) under clause (1) (c) unless the contract to purchase the deferred life annuity meets the prescribed requirements.

Approval (7) If a payment under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent.

(8) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Terms and conditions

(9) If a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent by order, subject to section 90 (hearing), may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

Order for repayment

(10) Subject to section 90 (hearing and appeal), an order for payment under subsection (9), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Enforcement

(11) The administrator is discharged on making the payment or transfer in accordance with the direction of the former member if the payment or transfer complies with this Act and the regulations.

Discharge of administrator

44.—(1) The administrator of a pension plan who is required by the pension plan to provide a pension, a deferred pension or an ancillary benefit may purchase the pension, deferred pension or ancillary benefit from an insurance company.

Purchase of pension

(2) The authority of the administrator under subsection (1) is subject to the entitlement of a member under section 43 and to the limitations prescribed in relation to transfers of funds from pension funds.

Limitations

(3) If a purchase under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the Superintendent.

Approval by Superintendent

(4) The Superintendent may approve a purchase mentioned in subsection (3) subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

Idem

(5) If a purchase that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is a failure to comply with a term or condition attached to the approval, the Superintendent, subject to section 90 (hearing), by order may require any person to whom payment under

Order for repayment

subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.

Enforcement (6) Subject to section 90 (hearing and appeal), an order for payment under subsection (5), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Joint and survivor pension benefits **45.**—(1) Every pension paid under a pension plan to a former member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.

Commuted value (2) The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the former member.

Amount of survivor benefit (3) The amount of the pension payable to the survivor of the former member and the spouse of the former member shall not be less than 60 per cent of the pension paid to the former member during the joint lives of the former member and his or her spouse.

Application of subss. (1-3) (4) Subsections (1) to (3) do not apply,
(a) in respect of a pension benefit if payment of the pension has commenced before the date on which this Act comes into force; or
(b) in respect of a former member who is living separate and apart from his or her spouse on the date that payment of the first instalment of the pension is due.

Deferred life annuity (5) Where,
(a) prior to the date on which this Act comes into force, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under the *Pension Benefits Act*;

R.S.O. 1980,
c. 373

(b) payments have not commenced under the annuity on the date on which this Act comes into force; and
(c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section and the insurance company shall make payments accordingly.

(6) For the purposes of subsection (5), the insurance company shall be deemed to be the administrator under sections 46 and 47.

Application
of ss.46, 47

46.—(1) Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit.

Information
for payment

(2) The person entitled to the payment shall provide the information to the administrator.

Person to
provide
information

(3) In the absence of actual notice to the contrary, the administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2) or, if the person does not provide the information, in accordance with the latest information in the records of the administrator.

Discharge
of
administrator

47.—(1) The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company a written waiver in the prescribed form or a certified copy of a domestic contract, as defined in Part IV of the *Family Law Act, 1986*, containing the waiver.

Waiver of
joint and
survivor
pension
benefit

1986, c. 4

(2) The waiver is not effective unless the written direction or certified copy is delivered to the administrator within the period of twelve months immediately preceding the commencement of payment of the pension benefit.

Time

(3) Persons who have delivered a waiver under subsection (1) may jointly cancel the waiver by written and signed notice delivered to the administrator before commencement of payment of the pension benefit.

Cancellation
of waiver

48.—(1) The spouse of a deceased former member of a pension plan who is receiving a pension under the pension plan is not disentitled to payment of the pension by reason only of remarriage after the death of the former member.

Remarriage
of spouse

Application
of subs. (1)

(2) Subsection (1) applies in respect of pensions that are being paid on the 1st day of January, 1987 or that commence to be paid after the 31st day of December, 1986.

Pre-
retirement
death benefit

49.—(1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 38 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the deferred pension; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

Idem

(2) If a member of a pension plan continues in employment after the normal retirement date under the pension plan and dies before commencement of payment of pension benefits referred to in section 38, the person who is the spouse of the member or former member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the pension benefit; or
- (b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the pension benefit.

Application
of
subss. (1, 2)

(3) Subsections (1) and (2) do not apply where the member or former member and his or her spouse are living separate and apart on the date of the death of the member or former member.

Election

(4) A spouse who has an entitlement under subsection (1) or (2) shall elect within the prescribed period of time to receive payment under clause (a) or (b) of the subsection and if the spouse does not make an election, the spouse shall be deemed to have elected to receive an immediate pension.

Calculation
of benefit

(5) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's employment were terminated immediately before the member's death.

Designated
beneficiary

(6) A member or former member of a pension plan may designate a beneficiary and the beneficiary is entitled to be

paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if,

- (a) the member or former member does not have a spouse on the date of death; or
- (b) the member or former member is living separate and apart from his or her spouse on that date.

(7) The personal representative of the member or former member is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member or former member, if the member or former member has not designated a beneficiary under subsection (6) and, Estate entitlement

- (a) does not have a spouse on the date of the member or former member's death; or
- (b) is living separate and apart from his or her spouse on that date.

(8) If the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member or former member upon the death of the member or former member, the commuted value of the payments may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7). Dependent children

(9) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment. Information

(10) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person. Discharge of administrator

(11) A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following: Offset

1. The reduction shall be calculated in the prescribed manner.
2. The reduction shall not exceed the prescribed limits.

Discharge of
entitlement

(12) Payment in accordance with this section replaces the entitlement of a member or former member in respect of a deferred pension mentioned in section 38.

Order or
domestic
contract

(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in a domestic contract or an order referred to in section 52 (payment on marriage breakdown).

Waiver

(14) A member and his or her spouse may waive the spouse's entitlement under subsection (1) or (2) in the prescribed form and, for the purpose, subsections (6) and (7) apply as if the member does not have a spouse on the date of the member's death.

Definition
R.S.O. 1980,
c. 143

(15) In this section, "personal representative" has the same meaning as in the *Estates Administration Act*.

Variation of
payment to
disabled
person

50. A pension plan may permit variation in the terms of payment of a pension or deferred pension by reason of the mental or physical disability of a member or former member that is likely to shorten considerably the life expectancy of the member or former member.

Commuted
value

51.—(1) A pension plan may provide for payment to a former member of the commuted value of a benefit if the annual benefit payable at the normal retirement date is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year that the former member terminated employment.

Idem

(2) A pension plan registered before the date on which this Act comes into force may provide that upon termination of employment a person entitled to a deferred pension under section 37 (deferred pension) is entitled to payment of an amount not greater than 25 per cent of the commuted value of the deferred pension.

Payment on
marriage
breakdown
1986, c. 4

52.—(1) A domestic contract as defined in Part IV of the *Family Law Act, 1986* or an order under Part I of that Act is not effective to require payment of a pension benefit before the earlier of,

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the relevant member or former member.

(2) A domestic contract or an order mentioned in subsection (1) is not effective to cause a party to the domestic contract or order to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member or former member during the period when the party and the member or former member were spouses.

Maximum
percentage

(3) If payment of a pension or a deferred pension is divided between spouses by a domestic contract or an order mentioned in subsection (1), the administrator is discharged on making payment in accordance with the domestic contract or order.

Discharge of
administrator

(4) If a domestic contract or an order mentioned in subsection (1) affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner.

Revaluation
of joint and
survivor
pension

(5) A spouse on whose behalf a certified copy of a domestic contract or order mentioned in subsection (1) is given to the administrator of a pension plan has the same entitlement, on termination of employment by the member or former member, to any option available in respect of the spouse's interest in the pension benefits as the member or former member named in the domestic contract or order has in respect of his or her pension benefits.

Transfer

53.—(1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in,

Discrimi-
nation
on basis of
sex

- (a) determining the amount of contributions required to be made by a member of the plan;
- (b) determining the pension benefits or the commuted value of pension benefits that a member, former member or other beneficiary is or may become entitled to;
- (c) the provision of eligibility conditions for membership; and
- (d) the provision of ancillary benefits.

(2) In order to comply with subsection (1), the administrator may,

Adminis-
tration

- (a) use annuity factors that do not differentiate as to sex;

- (b) provide for employer contributions that vary according to the sex of the employee; or
- (c) use any prescribed method of calculation or valuation.

Application

(3) This section applies in respect of contributions, benefits and conditions in relation to,

- (a) employment after the 31st day of December, 1986;
- (b) employment before the 1st day of January, 1987, in so far as it is dealt with in an amendment made to the pension plan after the 31st day of December, 1986; and
- (c) employment before the 1st day of January, 1987, in so far as it is dealt with in a pension plan established after the 31st day of December, 1986.

Inflation protection

54.—(1) Pension benefits, pensions or deferred pensions shall be adjusted in accordance with the established formula or formulas and in the prescribed manner to provide inflation-related increases.

Idem

(2) Any formula or formulas for any inflation related adjustments to pension benefits, pensions or deferred pensions shall be established only by amendment to this Act.

C.P.P./
O.P.P.
offsets

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

55.—(1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) shall not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

Idem

(2) The amount of the reduction of a member's pension benefit required under the pension plan in relation to payments mentioned in subsection (1) shall not be increased by reason of an increase in the payments after the date on which the member's employment is terminated.

Reduction re
*Old Age
Security Act*
(Canada)

(3) A pension plan for registration of which application is made on or after the date on which this Act comes into force shall not permit the reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada).

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered under the *Pension Benefits Act* that permitted such a reduction.

Application
of subs. (3)
R.S.C. 1980,
c. 373

(5) A pension plan shall not permit reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the 1st day of January, 1987.

Idem
R.S.C. 1970,
c. O-6

(6) Where a pension plan provides for the reduction of a member's or former member's bridging benefit by reason that the member or former member receives or is eligible to receive retirement benefits before attaining sixty-five years of age under the *Canada Pension Plan* or the *Quebec Pension Plan*, the reduction may only be made in the prescribed circumstances.

Bridging
benefit

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9

(7) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada), the variation shall be applied in the prescribed manner.

Variations
based on
other benefits
R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

CONTRIBUTIONS

56.—(1) A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations.

Funding

(2) An employer required to make contributions under a pension plan, or a person required to make contributions under a pension plan on behalf of an employer, shall make the contributions in the prescribed manner and in accordance with the prescribed requirements for funding,

Payment

(a) to the pension fund; or

(b) if pension benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan.

57.—(1) The administrator of a pension plan or, if there is an agent of the administrator responsible for receiving contributions under the pension plan, the administrator and the agent shall give written notice to the Superintendent of a contribution that is not paid when due.

Notice to
Superin-
tendent

(2) The administrator and the agent shall give the notice to the Superintendent within sixty days after the date on which

When notice
required

the administrator or the agent first became aware of the failure to pay the contribution.

Multi-
employer
pension plan

(3) The administrator and the agent of a multi-employer pension plan shall give the notice to the Superintendent within the prescribed period of time after the date on which the administrator or the agent first became aware of the failure to pay the contribution.

Trust
property

58.—(1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

Money
withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be money received by the employer from the employee.

Accrued
contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

Wind up

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

Lien and
charge

(5) The administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4).

Application
of
subss. (1,
3, 4)

(6) Subsections (1), (3) and (4) apply whether or not the moneys have been kept separate and apart from other money or property of the employer.

Moneys to
be paid to
insurance
company

(7) Subsections (1) to (6) apply with necessary modifications in respect of moneys to be paid to an insurance company that guarantees pension benefits under a pension plan.

Accrual

59.—(1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

(2) Interest on contributions shall be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements.

Interest

60. The administrator may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations.

Collection of contributions

61. The administrator of a multi-employer pension plan may require a person who receives contributions to the pension fund or who administers or invests the pension fund to be bonded in an amount required by the administrator or in the prescribed amount.

Bond

62. An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan.

Statement of employer's obligation

63. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations.

Investment of pension fund

LOCKING IN

64.—(1) No member or former member is entitled to a refund from a pension fund of contributions made in respect of employment in Ontario or a designated province on or after the qualification date.

Refunds

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member or former member or a payment under subsection 40 (4) (entitlement to excess amount).

Idem

(3) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a pension or to a deferred pension under section 37 (deferred pension for past service) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment before the 1st day of January, 1987.

Refund related to past employment

Refund
related
to post-
reform
employment

(4) Notwithstanding subsection (1), a member whose employment is terminated and who is not entitled to a pension or to a deferred pension under section 38 (deferred pension) is entitled to payment within the prescribed period of time of an amount equal to not less than the amount of the member's contributions, and the interest on the contributions, made under the pension plan in respect of the member's employment after the 31st day of December, 1986.

Application
of subs. (1)

- (5) Subsection (1) does not apply,
- (a) to prevent the commutation of a pension benefit under subsection 51 (1) (commuted value);
 - (b) to prevent a payment under subsection 51 (2); or
 - (c) to such other circumstances as are prescribed.

Application
of
subss. (3, 4)

(6) Subsections (3) and (4) do not apply in respect of a member of a multi-employer pension plan unless the member terminates his or her membership in the multi-employer pension plan.

Refund with
consent

(7) Notwithstanding subsection (1), on application by the administrator, contributions may be refunded to a member or a former member with the consent of the Commission.

Consent of
Commission

(8) On application by the administrator of a pension plan, the Commission may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.

Shorter
qualification
periods

65.—(1) A pension plan may provide for shorter qualification periods for entitlement to a deferred pension than those set out in sections 37 (deferred pension for past service) and 38 (deferred pension).

Refund

(2) A pension plan that provides for qualification periods for a deferred pension that are shorter than the periods set out in section 37 or 38 may permit a refund of contributions to a person who terminates employment after becoming entitled to a deferred pension under the pension plan before the completion of the qualification period referred to in section 37 or 38.

Void
transactions

66.—(1) Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan is void.

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with section 43 (transfer), 44 (purchase of pension), clause 49 (1) (b) (pre-retirement death benefit) or subsection 74 (2) (transfer rights on wind up) is void. Idem

(3) Subsections (1) and (2) do not apply to prevent the assignment of an interest in moneys payable under a pension plan or moneys payable as a result of a purchase or transfer under section 43, 44, clause 49 (1) (b) or subsection 74 (2) (transfer rights on wind up) by an order under the *Family Law Act, 1986* or by a domestic contract as defined in Part IV of that Act. Exemption for order or separation agreement
1986, c. 4

67.—(1) Money payable under a pension plan is exempt from execution, seizure or attachment. Exemption from execution, seizure or attachment

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity under section 43, 44, 49 or subsection 74 (2) is exempt from execution, seizure or attachment. Idem

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with section 43, 44, 49 or subsection 74 (2) is exempt from execution, seizure or attachment. Idem

(4) Notwithstanding subsection (1), payments under a pension or that result from a purchase or transfer under section 43, 44, clause 49 (1) (b) or subsection 74 (2) are subject to execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario to a maximum of one-half the money payable. Order for support or maintenance

(5) Subsection (4) applies to orders for support or maintenance enforceable in Ontario whether made before or after the coming into force of this Act. Application of subs. (4)

68.—(1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer under section 43, 44, 49 or subsection 74 (2) to which a person is entitled is not capable of being commuted or surrendered during the person's life. Commutation or surrender

(2) A transaction that purports to commute or surrender such a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement is void. Void transaction

Application of subss. (1, 2) (3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension under section 50 (variation of payment to disabled person) or to a commutation of a benefit under section 51 (commuted value).

WINDING UP

Winding up **69.**—(1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

Notice (2) The administrator shall give written notice of proposal to wind up the pension plan to,

- (a) the Superintendent;
- (b) each member of the pension plan;
- (c) each former member of the pension plan;
- (d) each trade union that represents members of the pension plan;
- (e) the advisory committee of the pension plan; and
- (f) any other person entitled to a payment from the pension fund.

Notice of partial wind up (3) In the case of a proposal to wind up only part of a pension plan, the administrator is not required to give written notice of the proposal to members, former members or other persons entitled to payment from the pension fund if they will not be affected by the proposed partial wind up.

Information (4) The notice of proposal to wind up shall contain the information prescribed by the regulations.

Effective date (5) The effective date of the wind up shall not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits, or, in any other case, on the date notice is given to members.

Order by Superintendent (6) The Superintendent by order may change the effective date of the wind up if the Superintendent is of the opinion that there are reasonable grounds for the change.

Winding up order by Superintendent **70.**—(1) The Superintendent by order may require the wind up of a pension plan in whole or in part if,

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;
- (f) all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person;
- (g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up in whole or in part;
- (h) in the case of a multi-employer pension plan,
 - (i) there is a significant reduction in the number of members, or
 - (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (i) any other prescribed event or prescribed circumstance occurs.

R.S.C. 1970,
c. B-3

(2) In an order under subsection (1), the Superintendent shall specify the effective date of the wind up, the persons or class or classes of persons to whom the administrator shall give notice of the order and the information that shall be given in the notice.

Date and
notice

Wind up
report

71.—(1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out,

- (a) the assets and liabilities of the pension plan;
- (b) the benefits to be provided under the pension plan to members, former members and other persons;
- (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- (d) such other information as is prescribed.

Payments
out of
pension
fund after
notice of
proposal to
wind up

(2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.

Application
of subs. (2)

(3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.

Approval

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent.

Refusal to
approve

(5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.

Rights and
benefits
on partial
wind up

(6) On the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.

Appointment
of
administrator
to wind up

72.—(1) If a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator fails to act, the Superintendent may act as or may appoint an administrator.

(2) The reasonable administration costs of the Superintendent or of the administrator appointed by the Superintendent may be paid out of the pension fund.

Costs of
adminis-
tration on
winding up

73.—(1) On the wind up of a pension plan in whole or in part, the administrator shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the pension plan, the options available to the person and any other prescribed information.

Notice of
entitlements

(2) If a person to whom notice is given under subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or shall be deemed to have elected to receive immediate payment of a pension benefit, if eligible therefor, or, if not eligible to receive immediate payment of a pension benefit, to receive a pension commencing at the earliest date mentioned in clause 75 (1) (b), and the administrator of the pension plan shall make payment in accordance with the election or deemed election.

Election

74.—(1) For the purpose of determining the amounts of pension benefits and any other benefits and entitlements on the winding up of a pension plan, in whole or in part,

Determi-
nation of
entitlements

- (a) the employment of each member of the pension plan affected by the winding up shall be deemed to have been terminated on the effective date of the wind up;
- (b) each member's pension benefits as of the effective date of the wind up shall be determined as if the member had satisfied all eligibility conditions for a deferred pension; and
- (c) provision shall be made for the rights under section 75.

(2) A person entitled to a pension benefit on the wind up of a pension plan, other than a person who is receiving a pension, is entitled to the rights under subsection 43 (1) (transfer) of a member who terminates employment and, for the purpose, subsection 43 (3) does not apply.

Transfer
rights on
wind up

75.—(1) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least fifty-five, at the effective date of the wind up of the pension plan in whole or in part, has the right to receive,

Combination
of age and
years of
employment

- (a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
- (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,
 - (i) the normal retirement date under the pension plan, or
 - (ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or
- (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

Part year

(2) In determining the combination of age plus employment or membership, one-twelfth credit shall be given for each month of age and for each month of continuous employment or membership at the effective date of the wind up.

Member for
ten years

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not wound up and if the membership of the member were continued shall be included in calculating the pension benefit under subsection (1) of a person who has at least ten years of continuous employment with the employer or has been a member of the pension plan for at least ten years.

Prorated
bridging
benefit

(4) For the purposes of subsection (3), if the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the bridging benefit shall be prorated by the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of pension benefits and a full bridging benefit under the pension plan if the pension plan were not wound up.

Notice of
termination
of
employment

(5) Membership in a pension plan that is wound up in whole or in part includes the period of notice of termination

of employment required under Part XII of the *Employment Standards Act*. R.S.O. 1980, c. 137

(6) Subsection (5) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment. Application of subs. (5)

(7) For the purposes of this section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer shall be deemed to have given the consent. Consent of employer

(8) This section and sections 74 (determination of entitlements), 85, 86 and 87 (guaranteed benefits) apply in respect of the wind up, in whole or in part, of a pension plan where the effective date of the wind up is on or after the 1st day of April, 1987. Application of section

(9) A person affected by a wind up who elects to receive a benefit under subsection (1) is not entitled to payment of any refund of contributions or interest under subsection 64 (3) or (4) (refunds). Refund

76.—(1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund, Liability of employer on wind up

- (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
- (b) an amount equal to the amount by which,
 - (i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Commission declares that the Guarantee Fund applies to the pension plan,
 - (ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
 - (iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 40 (3) (50 per cent rule) and section 75,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario.

Payment

(2) The employer shall pay the moneys due under subsection (1) in the prescribed manner and at the prescribed times.

Pension fund continues subject to Act and regulations

77. The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until all the assets of the pension fund have been disbursed.

Insufficient pension fund

78. Subject to the application of the Guarantee Fund, where the moneys in a pension fund are not sufficient to pay all the pension benefits and other benefits on the wind up of the pension plan in whole or in part, the pension benefits and other benefits shall be reduced in the prescribed manner.

SURPLUS

Payment out of pension fund to employer

79.—(1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.

Application for payment

(2) An employer who applies to the Commission for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to,

- (a) each member and each former member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members of the pension plan;
- (c) any other individual who is receiving payments out of the pension fund; and
- (d) the advisory committee established in respect of the pension fund.

Representations

(3) A person to whom notice has been transmitted under subsection (2) may make written representations to the Commission with respect to the application within thirty days after receiving the notice.

Return of excess amount

(4) The Commission may consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund or of an amount paid by the employer that should have been paid out of the pension fund, but shall not consent

unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment or the payment occurred.

80.—(1) The Commission shall not consent to payment of money that is surplus to the employer out of a continuing pension plan unless, Continuing pension plan

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or the applicant satisfies the Commission that the applicant is otherwise entitled to withdraw the surplus;
- (c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the employer's current service costs is retained in the pension fund as surplus;
- (d) where the members are not required to make contributions under the pension plan, the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,is retained in the pension fund as surplus;
- (e) where members are required to make contributions under the pension plan, all surplus attributable to contributions paid by members and the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

are retained in the pension fund as surplus; and

- (f) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Where no provision in pension plan

(2) A pension plan that does not provide for the withdrawal of surplus moneys while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus moneys accrued after the 31st day of December, 1986.

Application of subs. (2)

(3) Subsection (2) comes into force on the 1st day of January, 1989.

Wind up

(4) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Idem

(5) A pension plan that does not provide for payment of surplus moneys on the wind up of the pension plan shall be construed to require that surplus moneys accrued after the 31st day of December, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members and any other persons entitled to payments under the pension plan on the date of the wind up.

Application of subs. (5)

(6) Subsection (5) comes into force on the 1st day of January, 1989.

Decision

(7) The Commission shall transmit its decision, together with written reasons therefor, to the applicant and to each person who made written representations to the Commission in accordance with subsection 79 (3).

(8) The Commission may attach such conditions and limitations to its consent under this section as the Commission considers necessary in the circumstances.

Conditions
and
limitations

(9) The *Statutory Powers Procedure Act* does not apply in respect of a decision made by the Commission under this section.

Application
of
R.S.O. 1980,
c. 484

(10) The Commission shall not consent to payment of money from surplus to the employer out of a continuing pension plan until such date as may be prescribed.

Interim
prohibition
to giving
consent

SALES, TRANSFERS AND NEW PLANS

81.—(1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

Continuation
of benefits
under succes-
sor employer

- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

Exception

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

Employment
deemed not
terminated

Transfer
on sale

(4) Where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the pension benefits provided under the employer's pension plan, no transfer of assets shall be made from the employer's pension fund to the pension fund of the plan provided by the successor employer without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

Consent by
Superin-
tendent

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the employer's pension plan or that does not meet the prescribed requirements and qualifications.

Order for
return

(6) The Superintendent by order may require the transferee to return to the pension fund, with interest, assets transferred without the prior consent required by subsection (4).

Enforcement

(7) Subject to section 90 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Multi-
employer
pension
plan
R.S.O. 1980,
c. 288

(8) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan, the administrator of the first pension plan shall transfer to the administrator of the new pension plan all the assets and liabilities respecting those members who have elected under section 43 to transfer their entitlement to the new pension plan and the administrator of the new pension plan shall accept the transfer as assets and liabilities of the new plan.

Idem

(9) Where a group of members of a multi-employer pension plan are represented by a trade union and in accordance with section 56 of the *Labour Relations Act* the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan and the members are not entitled to make an election under section 43, the administrator of the old pension plan shall transfer to the administrator of the new pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the new pension plan shall accept them as assets and liabilities, determined as prescribed, of the new plan.

(10) Subsections (8) and (9) do not apply where there is a reciprocal agreement respecting the pension plans.

Application
of
subs. (8), (9)

(11) In this section, “successor employer” means the person who acquires the business or the assets of the employer.

Definition

82.—(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

Adoption
of new
pension plan

(2) The benefits under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits under the new pension plan.

Continuation
of benefits

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

Application
of subs. (2)

(4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

Transfer
of assets

(5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

Consent by
Superin-
tendent

(6) The Superintendent by order may require the transferee to return to the pension fund assets, with interest calculated in the prescribed manner, transferred without the prior consent of the Superintendent or transferred contrary to a prescribed term or condition.

Order

(7) Subject to section 90 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court.

Enforcement

(8) No transfer of assets shall be made from one pension fund to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 43 or 81 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the

Fund to fund

purpose, subsections (5) to (7) apply with necessary modifications.

PENSION BENEFITS GUARANTEE FUND

Guarantee
Fund
continued

83.—(1) The Pension Benefits Guarantee Fund is continued.

Adminis-
tration

(2) The Commission is responsible for the administration of the Guarantee Fund including the investment of the assets of the Guarantee Fund.

Expenses

(3) The Commission may charge to the Guarantee Fund the reasonable expenses incurred by the Commission in the administration of the Guarantee Fund.

Loans to
Guarantee
Fund

(4) If at any time the amount standing to the credit of the Guarantee Fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Guarantee Fund on such terms and conditions as the Lieutenant Governor in Council directs.

Guarantee
Fund
declaration

84.—(1) The Commission, subject to section 91 (notice and representations), shall declare, in the circumstances mentioned in subsection (2), that the Guarantee Fund applies to a pension plan.

Conditions
precedent

(2) The Commission shall make the declaration if,

- (a) the pension plan is registered under this Act or is registered in a designated province to provide for the reciprocal application of this Act;
- (b) the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;
- (c) the pension plan is wound up in whole or in part; and
- (d) the Commission is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied.

Guaranteed
benefits

85.—(1) Where the Guarantee Fund is declared by the Commission to apply to a pension plan, the following are guaranteed by the Guarantee Fund, subject to the limitations and qualifications as are set out in this Act or are prescribed:

1. Any pension in respect of employment in Ontario.
2. Any deferred pension in respect of employment in Ontario to which a former member is entitled, if the former member's employment or membership was terminated before the date on which this Act comes into force and the former member was at least forty-five years of age and had at least ten years of continuous employment with the employer, or was a member of the pension plan for a continuous period of at least ten years, at the date of termination of employment.
3. A percentage of any defined pension benefits in respect of employment in Ontario to which a member or former member is entitled under section 37 or 38 (deferred pension), or both, if the member's or former member's employment or membership was terminated on or after the date on which this Act comes into force, equal to 20 per cent if the combination of the member's or former member's age plus years of employment or membership in the pension plan equals fifty, plus an additional $\frac{2}{3}$ of 1 per cent for each additional one-twelfth credit of age and employment or membership to a maximum of 100 per cent.
4. All additional voluntary contributions, and the interest thereon, made by members or former members while employed in Ontario.
5. The minimum value of all required contributions made to the pension plan by a member or former member in respect of employment in Ontario plus interest.
6. That part of a deferred pension guaranteed under this subsection to which a former spouse of a member or of a former member is entitled under a domestic contract or an order under the *Family Law Act, 1986*. 1986, c. 4
7. Any pension to which a survivor of a former member is entitled under subsection 49 (1) (death before commencement of payment).

(2) For the purpose of this section, where a member or former member has at least ten years of continuous employment with the employer, a deferred pension or a pension benefit includes bridging benefits.

Bridging
benefits

Part year

(3) In determining the combination of age and membership or employment for subsection (1), one-twelfth credit shall be given for each full month of age and for each full month of continuous employment or membership as of the date of termination of employment.

Definition

(4) For the purpose of this section, “pension benefits” includes any benefits or options elected under section 75 (combination of age and years of employment).

Payments not guaranteed

86. The following are not guaranteed by the Guarantee Fund:

1. The payment of a pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of wind up.
2. Any increase to a pension or pension benefit or the value of a pension or pension benefit that became effective within three years before the date of wind up.
3. The amount of any pension or pension benefit, including any bridging supplement, in excess of \$1,000 per month or such greater amount as is prescribed by the regulations.
4. Pension benefits provided under a multi-employer pension plan.
5. Pension benefits provided under a pension plan that provides defined benefits, if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.
6. Pension benefits provided by prescribed pension plans or prescribed classes of pension plans.

Lien for payment out of Guarantee Fund

87.—(1) Where money is paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of a pension plan, the Commission has a lien and charge on the assets of the employer or employers who provided the pension plan.

Amount of lien

(2) The lien and charge is in an amount equal to the amount of the payment out of the Guarantee Fund plus interest thereon calculated at the rate and in the manner prescribed by the regulations.

(3) The lien and charge does not affect assets that are real property until a notice of the lien and charge that includes a description of the real property is registered in the proper land registry office, and the Commission may so register notice of the lien and charge.

Real
property

(4) The Commission is subrogated to the rights of the administrator of a pension plan in respect of which the Commission authorizes payment from the Guarantee Fund in satisfaction of a pension, deferred pension, pension benefit or contribution guaranteed under section 85 (guaranteed benefits).

Subrogation

ORDERS

88.—(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 90 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

Order by
Superin-
tendent

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

Condition
precedent
to order

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

(3) In an order under this section, the Superintendent may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order.

Time

(4) An order under this section is not effective unless the reasons for the order are set out in the order.

Reasons
for order

89.—(1) The Commission, in the circumstances mentioned in subsection (2) and subject to section 91 (notice and representations), by order may require an administrator to take the action specified in subsection (3).

Order by
Commission

(2) The Commission may make an order under this section where the Commission is of the opinion,

Grounds
for order

- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate for a pension plan;
- (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan do not accord with generally accepted actuarial principles; or
- (c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan.

Contents
of order

(3) An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.

HEARING AND APPEAL

Notice of
proposal
to refuse
or revoke

90.—(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

Notice of
proposal to
make order

(2) Where the Superintendent proposes to make an order under,

- (a) subsection 43 (9) (repayment of money transferred out of pension fund);
- (b) subsection 44 (5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
- (c) subsection 81 (6) (transfer of assets to pension fund of successor employer);
- (d) subsection 82 (6) (transfer of assets to new pension fund); or
- (e) section 88 (administration of pension plan or contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any

other person to whom the Superintendent proposes to direct the order.

(3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.

Notice of
proposal re
membership

(4) Where the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or consent.

Notice of
proposal to
attach terms
and
conditions
to approval
or consent

(5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.

Notice of
proposed
wind up
order

(6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

Notice
requiring
hearing

(7) Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may carry out the proposal stated in the notice.

Power of
Superin-
tendent

(8) Where the person requires a hearing by the Commission in accordance with subsection (6), the Commission shall appoint a time for and hold the hearing.

Hearing

(9) At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the

Power of
Commission

Commission may substitute its opinion for that of the Superintendent.

Conditions

(10) The Commission may attach such terms and conditions to its order or to the registration as the Commission considers proper to give effect to the purposes of this Act.

Parties

(11) The Superintendent, the person who requires a hearing and such other persons as the Commission specifies are parties to the proceeding before the Commission under this section.

Opportunity
to show
compliance

(12) A party to a hearing shall be given a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the registration of the pension plan.

Examination
of
documentary
evidence

(13) A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Release of
documentary
evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Notice of
proposal by
Commission

91.—(1) Where the Commission proposes to consider,

- (a) making a declaration that the Guarantee Fund applies to a pension plan;
- (b) making an order requiring the administrator of a pension plan to take specific action in relation to a report in respect of the pension plan; or
- (c) refusing to consent to a refund of contributions under section 64 (refunds),

the Commission shall serve notice of the proposal together with written reasons therefor on the administrator of the pension plan.

Additional
notices

(2) The administrator shall transmit copies of the Commission's notice to such other persons or classes of persons or both as the Commission specifies in the notice to the administrator.

(3) A notice by the Commission under subsection (1) shall state that the administrator, the persons and the representatives and members of classes of persons specified in the notice are entitled to make written representations to the Commission within thirty days after service of the notice under that subsection.

Representations

(4) An individual who is entitled to make representations to the Commission under subsection (3) shall be afforded an opportunity, during the period of time when representations may be made, to examine any written or documentary evidence that will be produced or any report the contents of which will be considered by the Commission when the Commission considers its proposal.

Examination of documentary evidence

(5) The Commission shall transmit a copy of its decision, together with written reasons therefor, to the administrator, the employer and every other person who made representations to the Commission in accordance with subsection (3).

Notice of decision

(6) The *Statutory Powers Procedure Act* does not apply in respect of a declaration, refusal or order mentioned in subsection (1) by the Commission.

Application of R.S.O. 1980, c. 484

92.—(1) A party to a proceeding before the Commission under section 80, 90 or 91 may appeal to the Divisional Court from the decision or order of the Commission.

Appeal to court

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the prescribed fee, the Commission shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from.

Certified copy of record

93.—(1) Three members of the Commission constitute a quorum for the purposes of a proceeding before the Commission under section 90, and decisions in such proceedings require the vote of a majority of the members of the Commission present at the hearing in the proceeding.

Quorum and votes

(2) The Commission may sit in two or more panels simultaneously for the purposes of such proceedings.

Panels

(3) The head of the Commission shall assign the members of the Commission to its panels and may change an assignment at any time.

Assignment

(4) Where a proceeding is commenced before the Commission and the term of office on the Commission of a person sitting for the hearing expires or is terminated, other than for

Expiry of member's term of office

cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Commission for the purpose of completing the proceeding in the same manner as if his or her term of office had not expired or been terminated.

PENSION COMMISSION

Commission
continued

94.—(1) The Pension Commission of Ontario is continued.

Composition

(2) The Commission shall be composed of not fewer than five and not more than nine members appointed by the Lieutenant Governor in Council.

Head and
deputy head

(3) The Lieutenant Governor in Council shall appoint the head and the deputy head of the Commission from among the members of the Commission.

Term of
office

(4) The members of the Commission shall be appointed for terms of not more than three years and may be reappointed for further terms of not more than three years.

Authority of
deputy head

(5) If the head of the Commission is absent or if there is a vacancy in the office of head of the Commission, the deputy head shall act as and have all the powers of the head of the Commission.

Acting head

(6) If both the head of the Commission and the deputy head are absent or if there are vacancies in the offices of head of the Commission and deputy head, the member of the Commission designated by the members of the Commission shall act as and have the powers of the head of the Commission.

Vacancies

(7) The Lieutenant Governor in Council may fill any vacancy in the membership of the Commission or in the offices of head or deputy head of the Commission.

Quorum

(8) A majority of the members of the Commission, including the head or deputy head of the Commission, constitutes a quorum.

Employees
R.S.O. 1980,
c. 418

(9) Such employees as are necessary to carry out the business of the Commission shall be appointed under the *Public Service Act*.

Salary and
expenses

(10) The members of the Commission shall be paid such remuneration and expenses as are fixed by the Lieutenant Governor in Council.

95.—(1) The office of Superintendent of Pensions is continued. Superintendent

(2) The Superintendent shall be appointed by the Commission. Appointment

(3) The Superintendent is the chief administrative officer of the Commission. Chief administrative officer

(4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission. Powers and duties

(5) The Superintendent may delegate in writing any power or duty of the Superintendent under this Act to any employee of the Commission, subject to the approval of the Commission and subject to any limitation or condition set out in the delegation. Delegation of powers and duties

96.—(1) The Commission may, subject to the approval of the Lieutenant Governor in Council, Reciprocal agreements

- (a) enter into agreements with the authorized representatives of another province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;
- (b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Commission as the Commission may require; and
- (c) delegate to a pension supervisory authority or the government of a designated province such functions and powers under this Act as the Commission may determine and the Commission may accept similar delegations of functions and powers from a pension supervisory authority or the government of a designated province.

(2) Where a pension plan required to be registered in Ontario is registered in a designated jurisdiction, the Commission by order may limit the application of this Act and the regulations to the pension plan and authorize the application of the law of the designated jurisdiction in respect of the pension plan. Applicable law

Duty of
Commission

97. It is the duty of the Commission,

- (a) to administer this Act and the regulations;
- (b) to promote the establishment, extension and improvement of pension plans throughout Ontario;
- (c) to advise the Minister in respect of the business of the Commission; and
- (d) to make recommendations to the Minister in respect of pension plans.

Research

98.—(1) It is a function of the Commission to conduct surveys and research programs and to compile statistical information related to pensions and pension plans.

Provision of
information

(2) The Commission may request an employer or an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such persons shall comply with the request within a reasonable period of time.

Confidenti-
ality

(3) The Commission shall use the information only for the purpose of compiling the statistical information.

Information

99.—(1) The Superintendent may require an employer, an administrator or any other person to supply to the Commission or the Superintendent such information in such form as is acceptable to the Superintendent and within such time limits as specified for the purpose of ascertaining whether or not this Act and the regulations are being complied with.

Idem

(2) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Superintendent or other person designated by the Superintendent.

Appraisal

(3) The Superintendent may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers or the Superintendent may obtain the appraisal at the expense of the administrator.

Time

(4) The administrator shall deliver the appraisal to the Superintendent within the period of time specified by the Superintendent in the requirement or within such other period of time as the Superintendent may specify.

100. Every person entrusted by the Commission with the custody or control of money in the course of employment shall give security in the manner and form provided by the *Public Officers Act*.

Security

R.S.O. 1980,
c. 415

101. No member of the Commission or of the staff of the Commission is personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Act or the regulations or for alleged neglect or default in the execution in good faith of such a duty or authority.

Liability of
members and
employees of
Commission

102. The Provincial Auditor shall examine annually the accounts and financial transactions of the Commission.

Audit

103.—(1) The Commission shall report annually to the Minister on the business of the Commission.

Annual
report

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Idem

GENERAL

104. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefits under this Act.

Pension
agency

105. Every pension plan that was registered and that continued to be qualified for registration under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, immediately before the coming into force of this Act, shall be deemed to be registered upon the coming into force of this Act.

Transitional

106. The Commission or the Superintendent may extend any time limit under this Act or the regulations before or after the expiration of the time if satisfied that there are reasonable grounds for applying for the extension, and may give such directions as the Commission or the Superintendent considers proper consequent upon the extension.

Extension
of time

107.—(1) The persons referred to in subsections (3) to (5) and (8) to (10) are the following:

Interpre-
tation,
persons

1. The Superintendent.

2. Any person designated by the Superintendent or the Commission.

Interpre-
tation,
purposes

(2) The purposes mentioned in subsections (3) to (5) and (10) are the following:

1. The administration of this Act and the regulations.
2. The administration of the Guarantee Fund.
3. The enforcement of any section of this Act or the regulations.
4. The exercise of a power or the carrying out of a duty under this Act or the regulations.
5. The carrying out of an order made under this Act.

Entry

(3) For a purpose mentioned in subsection (2), a person mentioned in subsection (1) may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to a pension plan or pension fund.

Examinations

(4) A person mentioned in subsection (1) may make examinations, investigations and inquiries and may require the production of any book, paper, document or thing related to a pension plan or pension fund.

Samples or
extracts

(5) A person mentioned in subsection (1) may make, take and remove or require the making, taking and removal of copies or extracts related to an examination, investigation or inquiry for a purpose mentioned in subsection (2).

Reasonable
times

(6) The authority under subsections (3) to (5) shall be exercised only at reasonable times.

Private
residence

(7) Subsection (3) is not authority to enter a private residence without the consent of the occupier.

Removal of
books, etc.,
for copying

(8) A person mentioned in subsection (1) who is making an examination, investigation or inquiry may, upon giving a receipt therefor, remove any books, papers, documents or things relating to the subject-matter of the examination, investigation or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out with reasonable dispatch and the books, papers, documents or things shall be returned forthwith after the copying is completed.

(9) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by a person mentioned in subsection (1) is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would have been admissible. Copies

(10) If an occupier of premises, Application for warrant

- (a) denies entry or access to, through or over the premises to a person mentioned in subsection (1);
- (b) instructs a person mentioned in subsection (1) to leave the premises;
- (c) obstructs a person mentioned in subsection (1) who is acting for a purpose mentioned in subsection (2);
- (d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a purpose mentioned in subsection (2),

a person mentioned in subsection (1) may apply to a justice of the peace for an inspection order under section 109.

(11) A person exercising a power under this section shall provide identification at the time of entry. Identification

108.—(1) No person shall hinder or obstruct a person mentioned in subsection 107 (1) who is lawfully carrying out a duty under this Act. Obstruction

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1). Private residence

109.—(1) Where a justice of the peace is satisfied on evidence upon oath, Order by justice of the peace

- (a) that there is reasonable and probable ground for believing that it is necessary,
 - (i) to enter and have access to, through and over any premises,
 - (ii) to make examinations, investigations or inquiries, and

(iii) to make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things, for a purpose mentioned in subsection 107 (2); and

(b) that a person mentioned in subsection 107 (1),

(i) has been denied entry to the premises,

(ii) has reasonable grounds to believe that entry to the premises will be denied,

(iii) has been instructed to leave the premises,

(iv) has been obstructed, or

(v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing a person mentioned in subsection 107 (1) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as they call upon to assist them.

Execution
of order

(2) An inspection order issued under this section shall be executed between 6 a.m. and 9 p.m. standard time unless the justice of the peace otherwise authorizes in the order.

Expiry of
order

(3) An inspection order issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the inspection order is issued.

Ex parte
application

(4) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises.

Offence

110.—(1) Every person who contravenes this Act or the regulations is guilty of an offence.

Idem

(2) Every person who contravenes an order made under this Act is guilty of an offence.

111.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$25,000. Penalty

(2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed is \$100,000 and not as provided in subsection (1). Corporation

(3) Where a corporation is guilty of an offence under this Act, an officer, official, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to a fine of not more than \$25,000. Officers, etc.

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company. Order for payment

(5) An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Supreme Court and is thereupon enforceable as an order of that court. Enforcement

(6) No proceeding under this Act shall be commenced after five years after the date when the subject-matter of the proceeding occurred or is alleged to have occurred. Time limit

112. Where a provision of this Act or the regulations or an order or approval of the Commission or the Superintendent under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the Commission or of the administrator of a pension plan affected by the contravention. Power to restrain

113.—(1) Any notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at his or her last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the seventh day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive the notice, order or other document, or did not receive it until a later Deemed service

date, through absence, accident, illness or other cause beyond his or her control.

General
notice

(3) Where the Superintendent is of the opinion that because the persons who are to be given any notice or document under this Act or the regulations are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Superintendent may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Superintendent may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is given.

Time for
actions by
administrator

114. An administrator of a pension plan who is required to take an action under this Act or the regulations shall take the action within the prescribed period of time.

Conflict

1987, c. 35

115. In the event of a conflict between this Act and any other Act, this Act prevails unless the other Act states that it is to prevail over the *Pension Benefits Act, 1987*.

Regulations

116.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) prescribing the times for filing or the last dates for filing of documents that are required to be filed under this Act;
- (c) prescribing reports that shall be submitted to the Commission, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared;
- (d) prescribing pension benefits that are not guaranteed by the Guarantee Fund;
- (e) prescribing assessments for the purposes of the Guarantee Fund and prescribing the classes of employers that shall pay such assessments;
- (f) prescribing procedures that shall govern the appointments of members of pension committees and advisory committees;

- (g) prescribing procedures that shall govern the establishment of advisory committees and the appointments of members of advisory committees;
- (h) prescribing fees that shall be paid for copies of documents provided by the Commission;
- (i) prescribing the methods of calculating the values of assets and liabilities of pension funds;
- (j) prescribing criteria that must be complied with before any surplus may be paid out of a pension fund;
- (k) prescribing the rate or the method of determining the rate at which an employer shall pay moneys due from the employer under this Act on the winding up of a pension plan, and prescribing the manner of payment and to whom the payments shall be made;
- (l) regulating or prohibiting the investment of moneys from pension funds and prescribing investments or classes of investments in which such moneys may be invested;
- (m) prescribing requirements for retirement savings contracts and life annuity contracts between members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made, and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;
- (n) prescribing the rate of interest and the method of calculating interest payable under this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;
- (o) prescribing forms and providing for their use;
- (p) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served shall be given, transmitted, filed or served;
- (q) prescribing requirements that shall be complied with in the administration of a pension plan;

- (r) prescribing records that shall be kept by the administrator of a pension plan and the period of time for which such records shall be retained by the administrator;
- (s) requiring the audit of pension plans or classes of pension plans and pension funds and classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;
- (t) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable to employment before the date on which this Act comes into force or that is attributable to employment after the date on which this Act comes into force;
- (u) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada);
- (v) governing the wind up of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind up, including priorities in allocation of assets;
- (w) governing the receiving, holding and disbursing of pension benefits by any agency established or designated under this Act;
- (x) exempting pension plans, pension funds, employees, administrators or other persons from the application of this Act or the regulations or from any section of this Act or the regulations.

R.S.C. 1970,
c. C-5
R.S.Q. 1977,
c. R-9
R.S.C. 1970,
c. O-6

Scope of
regulations

(2) A regulation may be general or particular in its application and may be limited as to time or place or both.

Adoption of
codes in
regulations

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with a code, formula, standard or procedure so adopted.

Terms,
conditions,
qualifications,
requirements

(4) Any provision of a regulation may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation.

117. The *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980 and the *Pension Benefits Amendment Act, 1983*, being chapter 2, are repealed. Repeals

118. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

119. The short title of this Act is the *Pension Benefits Act*, 1987. Short title

Bill 176

An Act to amend the Nursing Homes Act

The Hon. M. Elston
Minister of Health



1st Reading December 16th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill provides that the fundamental principle to be applied in interpreting the Act is that a nursing home is primarily the home of its residents. The Bill also sets out additional principles to be used in interpreting the Act.

The Minister is given discretion to consider the effect of the concentration of ownership of nursing homes and the balance between profit oriented and non-profit oriented nursing homes in deciding whether to grant a nursing home licence.

The Bill permits the Director to undertake to issue a licence to an applicant for a licence subject to the applicant satisfying specified conditions.

The Act now prohibits transfers of licences. The Bill regulates the surrender of licences and their issuance to new licensees and provides for the scrutiny of transfers by indirect means and share transfers of corporations that own licences.

The Bill requires persons who suspect that a resident has or may suffer harm as a result of unlawful conduct, neglect or improper or incompetent care or treatment to report that belief to the Director.

The Bill provides for the establishment in each nursing home of a residents' council, composed of residents and their representatives and a residents' council advisory committee, composed of elected and appointed members. The advisory committee is to advise residents, to receive and investigate complaints, to assist residents in dealings with licensees, to review the operations of nursing homes, to report to the residents' council and to report their concerns or recommendations to the Minister. The Minister is authorized to hire residents' council advisors to assist residents' council advisory committees.

The Bill provides that licensees shall post financial statements respecting the operation of the nursing homes.

A number of other amendments, including housekeeping amendments, are included in the Bill.

Bill 176

1987

An Act to amend the Nursing Homes Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 55, section 223, is further amended by adding thereto the following clauses:

(aa) “committee” means a residents’ council advisory committee;

.

(ba) “equity share” means a share of a class of shares of a corporation that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

.

(j) “security interest” means an agreement between a person and a licensee that secures the licensee’s payment or performance of an obligation by giving the person an interest in the licence.

(2) The said section 1 is further amended by adding thereto the following subsections:

(2) A person shall be deemed to have a controlling interest in a corporation if the person alone or with an associate directly or indirectly beneficially owns or controls,

Controlling
interest

(a) issued and outstanding equity shares in the corporation in an amount to permit the person to direct the management and policies of the corporation; or

(b) 10 per cent or more of the issued and outstanding equity shares in the corporation.

Associates

(3) One person shall be deemed to be an associate of another person if,

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partnership of which the other person is a partner;
- (c) one person is a corporation that is controlled directly or indirectly by the other person;
- (d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other person;
- (e) both persons are members of a voting trust where the trust relates to shares of a corporation; or
- (f) both persons are associates within the meaning of clauses (a) to (e) of the same person.

Calculating shares

(4) In calculating the total number of equity shares of a corporation beneficially owned or controlled for the purposes of this Act, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as having the number of shares equal to the total number of votes it carries.

2. The said Act is amended by adding thereto the following section:

Fundamental principle

1a.—(1) The fundamental principle to be applied in the interpretation of this Act and the regulations is that a nursing home is primarily the home of its residents and as such it is to be operated in such a way that the physical, psychological, social, cultural and spiritual needs of each of its residents are adequately met and that its residents are given the opportunity to contribute, in accordance with their ability, to the physical, psychological, social, cultural and spiritual needs of others.

Further principles

(2) Without restricting the generality of the foregoing, this Act and the regulations are to be interpreted so as to advance the objective that nursing homes be operated in accordance with the following principles:

1. Each resident shall be treated with dignity, courtesy and respect.
2. Each resident shall be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.
3. Each resident shall have a reasonable opportunity to keep in his or her room and display personal possessions, pictures and furnishings, in keeping with space limitations, safety requirements and other residents' rights.
4. Each resident shall have the right to consent to the giving or refusing of medical treatment or medication in accordance with the law and shall be given the opportunity to obtain an independent medical opinion concerning any proposed medical treatment or medication.
5. Each resident shall have the opportunity to participate fully in making any decision and obtaining an independent medical opinion with respect to any decision concerning his or her admission, discharge or transfer to or from a nursing home.
6. Each resident shall have the opportunity to communicate in confidence, to receive visitors and to consult in private with any other person without interference.
7. Each resident shall have the opportunity to form friendships, to enjoy relationships and to participate in the residents' council.
8. Each resident shall have the opportunity to pursue his or her social, cultural and other interests and to develop to his or her potential.
9. Each resident shall have the right to be informed of any law, rule or policy affecting the operation of the nursing home and to express his or her opinion concerning the operation of the nursing home without fear of reprisal.
10. Each resident shall respect the rights of other persons in the nursing home and shall treat other persons in the nursing home with dignity, courtesy and respect.

Principles
implied
in contracts

(3) Every contract relating to the admission of a resident to a nursing home shall be deemed to include the undertaking of the licensee to operate the home in accordance with the principles set forth in subsections (1) and (2).

Copies to
residents

(4) Every licensee shall post a copy of subsections (1), (2) and (3) in a prominent place in the nursing home and shall give a copy of them to each resident and a representative of the resident, if any, when the resident is admitted to the nursing home.

Transition

(5) Every licensee shall forthwith after the coming into force of this Act give a copy of subsections (1), (2) and (3) to every person who is a resident at that time and to a representative of that person, if any.

3.—(1) Subsection 4 (1) of the said Act is amended by striking out “subsection (2)” in the first line and inserting in lieu thereof “the following subsections”.

(2) Subsection 4 (2) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(3) Subsection 4 (3) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(4) Subclause 4 (4) (d) (ii) of the said Act is amended by striking out “or” and inserting in lieu thereof “and”.

(5) Section 4 of the said Act is amended by adding thereto the following subsection:

Idem

(4a) In considering under subsection (2) whether it is in the public interest to grant a licence to establish, operate or maintain a nursing home in an area, the Minister shall also take into account,

(a) the effect that granting the licence would have on the concentration of ownership of nursing homes in Ontario; and

(b) the effect that granting the licence would have on the balance between non-profit and profit-oriented nursing homes in Ontario.

(6) Subsection 4 (5) of the said Act is repealed and the following substituted therefor:

Grounds for
refusal

(5) Subject to section 7, the Director may refuse to issue a licence where in the Director's opinion,

- (a) the proposed nursing home or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;
- (b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will not be operated in accordance with the law and with honesty and integrity;
- (c) the applicant or, where the applicant is a corporation, its officers or directors or the persons with a controlling interest in it are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services; or
- (d) the past conduct of the applicant, or where the applicant is a corporation, of its officers, directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will be operated in a manner that is prejudicial to the health, safety or welfare of its residents.

(7) Subsection 4 (8) of the said Act is repealed.

4. The said Act is further amended by adding thereto the following sections:

4a.—(1) The Director may undertake to issue a licence to an applicant on condition that the applicant agrees to satisfy the conditions specified by the Director.

Undertake to
issue licence

(2) Where the Director determines that the applicant has complied with the specified conditions, the Director shall issue the licence.

Issue licence,
if conditions
met

(3) Where the Director determines that the applicant has not complied with the specified conditions, the Director by written notice to the applicant may propose to cancel the undertaking.

Notice
to cancel
undertaking

(4) The applicant may submit to the Minister a written request for review asking that the Minister extend the undertaking and amend its conditions.

Request
for review

Minister's
decision

(5) Where the Minister receives a request for review within fifteen days after delivery of the notice under subsection (3), the Minister may extend the undertaking and amend its conditions or may cancel the undertaking.

Undertaking
cancelled

(6) Where the Minister does not receive a request for review within fifteen days after delivery of the notice under subsection (3), the undertaking shall be deemed to be cancelled.

Surrender
and issue
of licence

4b.—(1) Where a licensee notifies the Director that the licensee intends to surrender a licence to the Director on condition that the Director issue in its place a licence to a specified person, the specified person may apply for the issuance of the licence under this Act.

Idem

(2) Subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications to an application for a licence under subsection (1).

Idem

(3) Upon receiving notice that the Director intends to approve an application under subsection (1), the licensee shall surrender the licence and the Director shall issue a licence to the applicant.

Share
transfer
R.S.O. 1980,
c. 466

4c.—(1) Where a corporation that is a private company as defined in the *Securities Act* is a licensee, it shall not permit an issue or transfer of equity shares of its capital stock that has the effect of changing the ownership or controlling interest in the corporation without the prior approval of the Director.

Idem

(2) In deciding whether to approve an issue or a transfer of shares under subsection (1), the Director shall treat the corporation as proposed to be constituted after the transfer as if it were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

Duty of
corporation
to notify
Director

4d.—(1) Where a licensee is a corporation, the licensee shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Idem

(2) Where a corporation has an interest in a licence, and the corporation or its officers or directors have reason to believe that an issue or transfer of equity shares of its capital stock or the happening of a condition by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the person shall so notify the Director forthwith.

(3) The Director from time to time, in writing, may direct a corporation that has an interest in a licence or its officers or directors to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of equity shares of capital stock in the corporation, which statement shall contain the information that in the opinion of the Director is reasonably-necessary to enable the Director to determine,

Statement
required

- (a) what persons, if any, have a controlling interest in the corporation; and
- (b) what persons, if any, own or beneficially own directly or indirectly the persons or a controlling interest in the persons mentioned in clause (a).

4e.—(1) A person who has a security interest in a licence shall not exercise that interest without the approval of the Director if exercise of the interest would change the ownership or controlling interest in the licence.

Exercise
of security
interest

(2) In deciding whether to approve an exercise of a security interest under subsection (1), the Director shall treat the person seeking to exercise the interest as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

Matters
to be
considered

4f.—(1) A licensee shall not enter into a contract whose effect is to change the management of a nursing home or the ownership or controlling interest in a licence without the approval of the Director.

Management
contracts

(2) In deciding whether to approve a contract described in subsection (1), the Director shall treat the person who would take over the management of the nursing home or the ownership or controlling interest in the licence under the contract as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

Matters
to be
considered

5. Clauses 5 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (d) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home is not being or will not be operated in accordance with the law and with honesty and integrity;

- (e) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the licensee, officers, directors or persons are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services;
- (f) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents;
- (g) the licensee has ceased operating the nursing home for a period of at least six months and is not taking reasonable steps to prepare the nursing home to re-open;
- (h) the licensee is a corporation described in subsection 4c (1) that has permitted an issue or transfer contrary to that subsection;
- (i) a corporation or its officers or directors have failed to make a report or statement to the Director, contrary to section 4d;
- (j) a person who has a security interest in a licence has exercised that interest contrary to subsection 4e (1) without the approval of the Director; or
- (k) the licensee has entered into a contract described in subsection 4f (1) without the approval of the Director.

6. Section 7 of the said Act is amended by adding thereto the following subsections:

Idem

(2a) A licensee who requires a hearing shall provide proof with the notice requiring a hearing that the licensee has mailed or delivered to the residents' council and has posted in a prominent place in the nursing home a copy of the Director's notice with written reasons therefor and a copy of the notice requiring a hearing.

(4a) Before the Board hears a matter it must be satisfied that the applicant or licensee has been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the licence where it would be just and reasonable to do so. Opportunity
to comply

7.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

(1) The following are parties before the Board under this Act, Parties

- (a) the Director;
- (b) the applicant or the licensee who has required the hearing;
- (c) an agent for the residents' council; and
- (d) any other person the Board may specify.

(2) Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

(2) The Board may permit any person who is not a party before it, including a resident, a representative of a resident, an employee of a nursing home or any other person who may be affected by its decision, to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent. Submissions

(3) Subsection 8 (3) of the said Act is amended by striking out “An applicant or licensee who is” in the first line and by inserting after “subsection (1)” in the second line “and a person who is permitted to make submissions to the Board under subsection (2)”.

(4) Subsection 8 (7) of the said Act is amended by striking out “and heard the evidence and argument of the parties” in the third and fourth lines and inserting in lieu thereof “heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2)”.

8. Section 11 of the said Act is repealed.

9. Subsection 12 (3) of the said Act is amended by inserting after “revoked” in the first line “and the revocation becomes final or where the nursing home is otherwise being operated without a licence”.

10.—(1) Subsection 13 (2) of the said Act is amended by striking out “reduction in” in the second line and inserting in lieu thereof “reducing or increasing” and by striking out “reduction” in the fourth line and inserting in lieu thereof “reducing or increasing”.

(2) Section 13 of the said Act is amended by adding thereto the following subsections:

Agreement
for extra
services

(3) The Minister may enter into an agreement with a licensee for the provision of services in addition to those provided for under this Act and the regulations.

Copy to
residents’
council

(4) Upon entering into an agreement with the Minister under subsection (3), the licensee shall provide a copy of the agreement to the residents’ council.

11.—(1) Section 14 of the said Act is amended by striking out “or” at the end of clause (b) and by adding thereto the following clauses:

- (d) for services entered into under an agreement described in subsection 13 (3), the amount provided for by the agreement;
- (e) for services not mentioned in clauses (a) through (c) that are designated by the regulations, the amount prescribed by the regulations; or
- (f) for services not mentioned in clauses (a) through (e), the amount provided for under written agreements for those services between the licensee and the individual residents.

(2) The said section 14 is further amended by adding thereto the following subsection:

Idem

(2) The Director may permit a licensee to charge a specific amount greater than the amount prescribed by the regulations for a service described in clause (1) (e) where the licensee demonstrates to the Director that the actual cost of providing the service is greater than the amount prescribed by the regulations.

12. Section 15 of the said Act is repealed and the following substituted therefor:

Recovery
of excess
payment

15.—(1) Where any payment referred to in clause 14 (1) (a) or (d) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14

or the service has not been rendered or has been inadequately rendered, the Minister may,

- (a) withhold payments due to the licensee to recover the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) bring an action to recover from the licensee that amount, with costs, by action in a court of competent jurisdiction.

(2) Where any payment referred to in clause 14 (1) (b), (c), (e) or (f) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14, the service has not been rendered or has been inadequately rendered or in the case of a service described in clause 14 (1) (f) there was no written agreement, the Minister may, Idem

- (a) order the licensee to pay back to the person from whom it was accepted the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) withhold payments due to the licensee for the purpose of recovering the excess payment or the amount for which no service or inadequate service was rendered and pay the amount recovered to the person from whom it was accepted by or on behalf of the licensee.

13. Subsection 16 (2) of the said Act is amended by inserting after “inspector” wherever it occurs “and residents’ council advisor”.

14.—(1) Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

(1) An inspector without a warrant at any time may enter upon the premises, including the business premises, of a nursing home to make an inspection to ensure that the provisions of this Act and the regulations are being complied with. Inspection

(2) Subsection 17 (2) of the said Act is amended by striking out “may at any reasonable time” in the fourth line and inserting in lieu thereof “without a warrant at any reasonable time may”.

(3) Section 17 of the said Act is amended by adding thereto the following subsection:

Warrant

(2a) No inspector shall enter any room or place that is not in a nursing home and that is actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(4) Subsection 17 (3) of the said Act is repealed and the following substituted therefor:

Powers on
inspection

(3) Upon an inspection under this section, the inspector,

- (a) is entitled at any reasonable time to free access to all books of account, documents, bank accounts, vouchers, correspondence and records, including payroll records, records of staff hours worked, medical and drug records and any other records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations;
- (b) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove any material referred to in clause (a) that relates to the purpose of the inspection in order to make a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person whose premises are being inspected;
- (c) may inspect the premises and operations;
- (d) may examine or test samples of substances to ensure that the regulations are being complied with; and
- (e) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove a substance or a sample of a substance referred to in clause (d) in order to conduct further tests, for any purpose reasonably necessary to carry out effectively the purposes of this Act.

Not to
obstruct
inspector

(3a) No person shall obstruct the inspector or withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection.

(5) Section 17 of the said Act is further amended by adding thereto the following subsection:

(4a) A certificate as to the result of any test that contains the name and a statement of the qualifications of the person who conducted the test and purports to be signed by that person is, without proof of the office or signature of that person, receivable in evidence as *prima facie* proof of the facts stated in the certificate for all purposes in any proceeding or prosecution if it has been served on any party or defendant to the proceeding or prosecution within a reasonable time before the proceeding or trial in which it is to be adduced.

Admissibility
of test results

(6) Subsection 17 (5) of the said Act is repealed.

15. The said Act is further amended by adding thereto the following sections:

17a.—(1) A person who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect shall forthwith report the suspicion and the information upon which it is based to the Director.

Reporting
of harm to
resident

(2) No person shall dismiss, discipline, penalize, coerce, intimidate or attempt to coerce or intimidate another person because the other person has,

No discipline
for reporting

- (a) made a report to the Director under subsection (1);
- (b) advised the Director of a breach of this Act or the regulations; or
- (c) advised the Director of any other matter concerning the care of a resident or the operation of a nursing home that the other person believes ought to be reported to the Director,

unless the other person acts maliciously or without reasonable grounds.

(3) No person shall include in a report to the Director under subsection (1) information the person knows to be false.

Idem

(4) Notwithstanding that the information on which a report may be based is confidential or privileged, subsection (1) also applies to a legally qualified medical practitioner or a person registered under the *Health Disciplines Act* to practice a health discipline and no action for making the report shall be commenced against a practitioner or person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion.

Duty on
practitioners

R.S.O. 1980,
c. 196

Privilege
of
solicitor

(5) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

Licensee
to forward
complaints

17b. A licensee shall forward forthwith on receipt to the Director any written complaint the licensee receives concerning the care of a resident or the operation of the nursing home.

Financial
statement

17c.—(1) A licensee shall, at the end of the licensee's fiscal year, prepare or cause to be prepared for each of the licensee's nursing homes a financial statement for the operation of that nursing home, including,

- (a) a statement of profit and loss for that fiscal year; and
- (b) any other matters respecting its financial operation that are prescribed by the regulations.

Statement to
be filed

(2) A licensee shall file the financial statement referred to in subsection (1) with the Minister within ninety days after the end of the licensee's fiscal year.

Posting
and public
inspection

(3) The licensee shall post a copy of the financial statement referred to in subsection (1) in a prominent place in the nursing home.

Residents'
council

17d.—(1) Whenever at least three persons who are either residents in a nursing home or representatives of residents so request, a residents' council shall be established for that nursing home.

Idem

(2) The residents' council shall be established and conducted in the manner provided for by the regulations.

Members

(3) Each resident, or where the resident is unable to participate, the resident's legal representative may be a member of the residents' council and, in addition, a person selected by the resident or the legal representative may be a member of the residents' council.

Idem

(4) No licensee or where the licensee is a corporation, no officer, director or person with a controlling interest in it and no member of the staff of a nursing home shall be a member of a residents' council.

Residents'
council
advisory
committee

17e.—(1) There shall be established for each residents' council a residents' council advisory committee to be composed of,

- (a) no fewer than three and no more than seven members, to be elected by the residents' council from among its members; and
 - (b) no more than three members who live in the area in which the nursing home is located, to be appointed by the Minister.
- (2) It is the function of a committee and it has the power to, Powers of committee
- (a) advise residents respecting their rights and obligations under this Act;
 - (b) advise residents respecting the rights and obligations of the licensee under this Act;
 - (c) receive and investigate complaints from residents and other persons;
 - (d) meet regularly with the licensee to,
 - (i) review Ministry inspection reports,
 - (ii) review the allocation of money for food, supplies and services provided by the nursing home,
 - (iii) review the financial statement filed under section 17c when it is filed, and
 - (iv) review the operation of the nursing home;
 - (e) attempt to mediate and resolve any dispute between a resident and the licensee;
 - (f) attend meetings of the residents' council and report on its activities to the residents' council;
 - (g) report to the Minister any concerns and recommendations that in its opinion or in the opinion of the residents' council ought to be brought to the Minister's attention; and
 - (h) carry out any other functions prescribed by the regulations.

17f.—(1) The Minister, with the consent of a committee, Residents' council advisor may appoint a residents' council advisor to assist the committee in carrying out its responsibilities.

Idem

(2) In carrying out his or her duties, a residents' council advisor shall take instructions from and report to the committee.

Entry and inspection

(3) A residents' council advisor at any time may enter upon the premises of a nursing home for the purpose of meeting with a resident or a member of the residents' council or both and subject to subsection (4) the advisor, where instructed by the committee to make such an inspection, may enter upon the premises of the nursing home and is entitled to free access to all books of account, documents, bank accounts, vouchers, correspondence and records, including payroll records, records of staff hours worked, medical and drug records and any other records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations.

Consent of resident

(4) A residents' council advisor is not entitled to free access to a record that relates to a particular resident without the consent of that resident or, where the resident is unable to consent, of the legal representative of the resident.

Idem

(5) No person shall refuse entry to a nursing home to a residents' council advisor or obstruct a residents' council advisor or withhold or destroy, conceal or refuse to furnish any information or thing required by a residents' council advisor for the purpose of an inspection.

Licensee to co-operate

17g. The licensee shall co-operate with the residents' council, the committee and the residents' council advisor and shall provide the information, including financial information, and assistance to them provided for by the regulations.

Committee, etc., not personally liable

17h. No proceeding shall be commenced against a member of a committee or a residents' council advisor for any act done in accordance with section 17e or 17f, unless the act is done maliciously or without reasonable grounds.

16. Section 19 of the said Act is repealed and the following substituted therefor:

Liability of licensee

19.—(1) In addition to any other liability for an offence under this Act or the regulations, the licensee is guilty of an offence for the contravention of any provision of this Act except subsection 17a (1) or of the regulations that creates an obligation in respect of a nursing home,

(a) without imposing a duty on a specified person to carry it out; or

- (b) by imposing a duty on a specified person other than the licensee to carry it out.

(2) Notwithstanding subsection (1), a licensee is guilty of an offence under subsection (1) if the licensee contravenes subsection 17a (1). Idem

19a. Any person who contravenes any provision of this Act or the regulations, except subsection 12 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and not more than \$10,000 for each subsequent offence. Penalty

19b.—(1) Where a party to a proceeding under section 19 or 19a wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is unable to attend the proceeding, the party may apply to a provincial judge for an order appointing a justice of the peace to attend upon the witness and to take the evidence of the witness under oath. Evidence of disabled resident

(2) Where a party to a proceeding before the Board under this Act wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is unable to attend the proceeding, the members of the Board who are holding the hearing, at the request of the party, may attend upon the witness and take the evidence of the witness. Idem

(3) A medical report signed by a legally qualified medical practitioner stating that the practitioner believes the resident is unable to attend a proceeding by reason of age, infirmity or physical disability is *prima facie* proof of the inability of the witness to attend the proceeding. Medical report sufficient proof

(4) A person shall not take evidence from a resident under subsection (1) or (2) unless reasonable notice of the time for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the resident. Opportunity to examine

(5) A transcript of the evidence of a resident taken under subsection (1) and certified as correct by the person who recorded it may be read in evidence in a proceeding under this Act. Transcript as evidence

17.—(1) Clause 20 (j) of the said Act is amended by adding at the end thereof “and governing their form and content”.

(2) Section 20 of the said Act is amended by adding thereto the following clauses:

(ma) respecting the form and content of requests for proposals for the issuing of nursing home licenses;

.

(ta) designating services to be provided to residents by licensees for which no more than a prescribed amount may be charged and prescribing that amount;

(tb) prescribing matters to be included in a financial statement for the operation of a nursing home;

(tc) respecting the establishment and conduct of residents' councils;

(td) prescribing additional functions of a committee;

(te) respecting the information, financial information and assistance a licensee shall give to a residents' council, a committee and a residents' council advisor.

Commence-
ment

18. This Act comes into force on the day it receives Royal Assent.

Short title

19. The short title of this Act is the *Nursing Homes Amendment Act, 1987*.

Bill 176

An Act to amend the Nursing Homes Act

The Hon. M. Elston
Minister of Health

<i>1st Reading</i>	December 16th, 1986
<i>2nd Reading</i>	February 4th, 1987
<i>3rd Reading</i>	
<i>Royal Assent</i>	



(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

The Bill provides that the fundamental principle to be applied in interpreting the Act is that a nursing home is primarily the home of its residents. The Bill also sets out a residents' bill of rights and provides for its enforcement.

The Minister is given discretion to consider the effect of the concentration of ownership of nursing homes and the balance between profit oriented and non-profit oriented nursing homes in deciding whether to grant a nursing home licence.

The Bill permits the Director to undertake to issue a licence to an applicant for a licence subject to the applicant satisfying specified conditions.

The Act now prohibits transfers of licences. The Bill regulates the surrender of licences and their issuance to new licensees and provides for the scrutiny of transfers by indirect means and share transfers of corporations that own licences.

The Bill provides a mechanism for the public to make submissions to the Director before the Director makes a decision concerning the issue, reissue or transfer of licences. It also provides for public meetings to be held concerning these matters.

The Bill requires persons other than residents who suspect that a resident has or may suffer harm as a result of unlawful conduct, neglect or improper or incompetent care or treatment to report that belief to the Director.

The Bill provides for the establishment in each nursing home of a residents' council, composed of residents or their representatives and persons appointed as community members. The residents' council is to advise residents, to assist residents in dealings with licensees, to review the operations of nursing homes and to report their concerns or recommendations to the Minister. The Minister is authorized to hire residents' council assistants to assist residents' councils.

The Bill provides that licensees shall post statements respecting the operation and financial affairs of the nursing homes.

A number of other amendments, including housekeeping amendments, are included in the Bill.

Bill 176

1987

An Act to amend the Nursing Homes Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 55, section 223, is further amended by adding thereto the following clauses:

(ba) “equity share” means a share of a class of shares of a corporation that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

(j) “security interest” means an agreement between a person and a licensee that secures the licensee’s payment or performance of an obligation by giving the person an interest in the licence.

(2) The said section 1 is further amended by adding thereto the following subsections:

(2) A person shall be deemed to have a controlling interest in a corporation if the person alone or with an associate directly or indirectly beneficially owns or controls,

(a) issued and outstanding equity shares in the corporation in an amount to permit the person to direct the management and policies of the corporation; or

(b) 10 per cent or more of the issued and outstanding equity shares in the corporation.

(3) One person shall be deemed to be an associate of another person if,

Controlling
interest

Associates

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partnership of which the other person is a partner;
- (c) one person is a corporation that is controlled directly or indirectly by the other person;
- (d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other person;
- (e) both persons are members of a voting trust where the trust relates to shares of a corporation;
- ➡ (f) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or ⬆
- (g) both persons are associates within the meaning of clauses (a) to (f) of the same person.

Calculating
shares

(4) In calculating the total number of equity shares of a corporation beneficially owned or controlled for the purposes of this Act, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as having the number of shares equal to the total number of votes it carries.

2. The said Act is amended by adding thereto the following section:

Fundamental
principle

1a.—(1) The fundamental principle to be applied in the interpretation of this Act and the regulations is that a nursing home is primarily the home of its residents and as such it is to be operated in such a way that the physical, psychological, social, cultural and spiritual needs of each of its residents are adequately met and that its residents are given the opportunity to contribute, in accordance with their ability, to the physical, psychological, social, cultural and spiritual needs of others.

Residents'
bill of
rights

(2) Every licensee shall ensure that the following rights of residents are fully respected and promoted:

1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's dignity and individuality and to be free from mental and physical abuse.
2. Every resident has the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.
3. Every resident has the right to be told who is responsible for and who is providing the resident's direct care.
4. Every resident has the right to be afforded privacy in treatment and in caring for his or her personal needs.
5. Every resident has the right to keep in his or her room and display personal possessions, pictures and furnishings in keeping with safety requirements and other residents' rights.
6. Every resident has the right,
 - i. to be informed of his or her medical condition, treatment and proposed course of treatment,
 - ii. to give or refuse consent to treatment, including medication, in accordance with the law and to be informed of the consequences of giving or refusing consent,
 - iii. to have the opportunity to participate fully in making any decision and obtaining an independent medical opinion concerning any aspect of his or her care, including any decision concerning his or her admission, discharge or transfer to or from a nursing home, and
 - iv. to have his or her medical records kept confidential in accordance with the law.
7. Every resident has the right to receive reactivation and assistance towards independence consistent with his or her requirements.
8. Every resident who is being considered for restraints has the right to be fully informed about

the procedures and the consequences of receiving or refusing them.

9. Every resident has the right to communicate in confidence, to receive visitors of his or her choice and to consult in private with any person without interference.
10. Every resident whose death is likely to be imminent has the right to have members of the resident's family present twenty-four hours per day.
11. Every resident has the right to designate a person to receive information concerning any transfer or emergency hospitalization of the resident and where a person is so designated to have that person so informed forthwith.
12. Every resident has the right to exercise the rights of a citizen and to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the residents' council, nursing home staff, government officials or any other person inside or outside the nursing home, without fear of restraint, interference, coercion, discrimination or reprisal.
13. Every resident has the right to form friendships, to enjoy relationships and to participate in the residents' council.
14. Every resident has the right to meet privately with his or her spouse in a room that assures privacy and where both spouses are residents in the same nursing home, they have a right to share a room according to their wishes, if an appropriate room is available.
15. Every resident has a right to pursue social, cultural, religious and other interests, to develop his or her potential and to be given reasonable provisions by the nursing home to accommodate these pursuits.
16. Every resident has the right to be informed in writing of any law, rule or policy affecting the operation of the nursing home and of the procedures for initiating complaints.
17. Every resident has the right to manage his or her own financial affairs where the resident is able to do

so, and where the resident's financial affairs are managed by the nursing home, to receive a quarterly accounting of any transactions undertaken on his or her behalf and to be assured that the resident's property is managed solely on the resident's behalf.

- 18. Every resident has the right to live in a safe and clean environment.
- 19. Every resident has the right to be given access to protected areas outside the nursing home in order to enjoy outdoor activity, unless the physical setting makes this impossible.

(3) Without restricting the generality of subsection (1), this Act and the regulations are to be interpreted so as to advance the objective that the resident's rights set out in subsection (2) be respected.

Further
guide to
interpretation

(4) There shall be a written contract relating to the admission of every resident to a nursing home.

Written
contract

(5) A contract entered into in accordance with subsection (4) or (8) shall include,

Provisions
to be
included

- (a) a statement of the rights of the resident under subsection (2) and a statement by the licensee agreeing to respect and promote those rights;
- (b) the information necessary to enable the resident to make a complaint regarding the nursing home to the Ministry;
- (c) any agreement for additional services and the charges for those services; and
- (d) the name and address of the person who will act, if necessary, as the representative of the resident for the purposes of this Act and the regulations.

(6) A contract entered into in accordance with subsection (4), (8) or (9) shall be reviewed annually by the resident or the resident's representative and the licensee.

Annual
review

(7) Every licensee shall post a copy of subsections (1), (2), (4), (5) and (6) in a prominent place in the nursing home.


Posting of
information

(8) Subject to subsection (9), every licensee shall, within ninety days after the coming into force of this Act, enter into

Transition

a written contract with every person who is a resident at that time and has not entered into a contract under subsection (4), relating to the services provided by the nursing home.

Idem

(9) Where either party described in subsection (8) refuses to enter into a written contract, the licensee shall note that refusal in the resident's records and a contract between the licensee and the resident shall be deemed to have been made containing the provisions enumerated in clauses (5) (a) and (b) and, with the concurrence of the resident, containing the provisions enumerated in clauses (5) (c) and (d). 

3.—(1) Subsection 4 (1) of the said Act is amended by striking out “subsection (2)” in the first line and inserting in lieu thereof “the following subsections”.

(2) Subsection 4 (2) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(3) Subsection 4 (3) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(4) Subclause 4 (4) (d) (ii) of the said Act is amended by striking out “or” and inserting in lieu thereof “and”.

(5) Section 4 of the said Act is amended by adding thereto the following subsections:


Idem

(4a) In considering under subsection (2) whether it is in the public interest to grant a licence to establish, operate or maintain a nursing home in an area, the Minister shall also take into account,



- (a) the effect that granting the licence would have on the concentration of ownership of nursing homes,
 - (i) in the area,
 - (ii) in the area and any other area, or
 - (iii) in Ontario; and
- (b) the effect that granting the licence would have on the balance between non-profit and profit-oriented nursing homes,
 - (i) in the area,
 - (ii) in the area and any other area, or

(iii) in Ontario.

(4b) For the purpose of clause (4a) (b), the Minister shall announce, annually, in the Legislature the desired balance between non-profit and profit-oriented nursing homes.  Idem


(6) Subsection 4 (5) of the said Act is repealed and the following substituted therefor:

(5) Subject to section 7, the Director may refuse to issue a licence where in the Director's opinion,  Grounds for refusal

- (a) the proposed nursing home or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;
- (b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will not be operated in accordance with the law and with honesty and integrity;
- (c) the applicant or, where the applicant is a corporation, its officers or directors or the persons with a controlling interest in it are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services; or
- (d) the past conduct of the applicant, or where the applicant is a corporation, of its officers, directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will be operated in a manner that is prejudicial to the health, safety or welfare of its residents.

(7) Subsection 4 (8) of the said Act is repealed.

4. The said Act is further amended by adding thereto the following sections:

4a.—(1) The Director may undertake to issue a licence to an applicant on condition that the applicant agrees to satisfy the conditions specified by the Director.  Undertake to issue licence

Issue licence,
if conditions
met

(2) Where the Director determines that the applicant has complied with the specified conditions, the Director shall issue the licence.

Notice
to cancel
undertaking

(3) Where the Director determines that the applicant has not complied with the specified conditions, the Director by written notice to the applicant may propose to cancel the undertaking.

Request
for review

(4) The applicant may submit to the Minister a written request for review asking that the Minister extend the undertaking and amend its conditions.

Minister's
decision

(5) Where the Minister receives a request for review within fifteen days after delivery of the notice under subsection (3), the Minister may extend the undertaking and amend its conditions or may cancel the undertaking.

Undertaking
cancelled

(6) Where the Minister does not receive a request for review within fifteen days after delivery of the notice under subsection (3), the undertaking shall be deemed to be cancelled.

Surrender
and issue
of licence

4b.—(1) Where a licensee notifies the Director that the licensee intends to surrender a licence to the Director on condition that the Director issue in its place a licence to a specified person, the specified person may apply for the issuance of the licence under this Act.

Idem

(2) Subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications to an application for a licence under subsection (1).

Idem

(3) Upon receiving notice that the Director intends to approve an application under subsection (1), the licensee shall surrender the licence and the Director shall issue a licence to the applicant.

Share
transfer
R.S.O. 1980,
c. 466

4c.—(1) Where a corporation that is a private company as defined in the *Securities Act* is a licensee, it shall not permit an issue or transfer of equity shares of its capital stock that has the effect of changing the ownership or controlling interest in the corporation without the prior approval of the Director.

Idem

(2) In deciding whether to approve an issue or a transfer of shares under subsection (1), the Director shall treat the corporation as proposed to be constituted after the transfer as if it were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

4d.—(1) Where a licensee is a corporation, the licensee shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Duty of corporation to notify Director

(2) Where a corporation has an interest in a licence, and the corporation or its officers or directors have reason to believe that an issue or transfer of equity shares of its capital stock or the happening of a condition by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the person shall so notify the Director forthwith.

Idem

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence or its officers or directors to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of equity shares of capital stock in the corporation, which statement shall contain the information that in the opinion of the Director is reasonably necessary to enable the Director to determine,

Statement required

- (a) what persons, if any, have a controlling interest in the corporation; and
- (b) what persons, if any, own or beneficially own directly or indirectly the persons or a controlling interest in the persons mentioned in clause (a).

➡ (4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the Director's opinion, it is reasonably necessary for the purposes set out in subsection (3). ⬆

Idem

4e.—(1) A person who has a security interest in a licence shall not exercise that interest without the approval of the Director if exercise of the interest would change the ownership or controlling interest in the licence.

Exercise of security interest

(2) In deciding whether to approve an exercise of a security interest under subsection (1), the Director shall treat the person seeking to exercise the interest as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

Matters to be considered

4f.—(1) A licensee shall not enter into a contract whose effect is to change the management of a nursing home or the ownership or controlling interest in a licence without the approval of the Director.

Management contracts

Matters
to be
considered

(2) In deciding whether to approve a contract described in subsection (1), the Director shall treat the person who would take over the management of the nursing home or the ownership or controlling interest in the licence under the contract as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.



No decision
without
public
submissions

4g.—(1) The Director shall not issue a licence, undertake to issue a licence under section 4a, reissue a licence under section 4b or approve an issue or transfer of shares under section 4c unless the public has been given notice of the request to do so and an opportunity to make written and oral submissions in accordance with this section.

Idem

(2) The Director shall not renew a licence unless the public has been given notice of the request to do so and an opportunity to make written submissions in accordance with this section.

Idem

(3) Without limiting the requirement on the Director to give the public an opportunity for oral submissions under subsection (1), the Director shall ensure that for each nursing home at least once in every five years the public is given notice of the request to carry out a matter described in subsection (1) or (2) and an opportunity to make oral submissions with respect to it in accordance with this section.

Public
meeting

(4) Where the opportunity for oral submissions is required under subsection (1) or (3), the Director shall cause a public meeting to be held concerning the request before making a decision and that meeting shall be held in the area where the nursing home is located.

Idem

(5) Notwithstanding subsection (4), where the public meeting concerns an issue or transfer of shares under section 4c in respect of a licensee that owns or controls more than one nursing home and those nursing homes are located in different areas, the Director shall determine where the meeting shall be held.

Idem

(6) If the Director is not able to chair the public meeting, the Director shall designate a representative of the Ministry to do so, and that representative shall prepare and give the Director a written report of the proceedings.

Notice

(7) At least thirty days before a decision in relation to a matter described in subsection (1) or (2) is to be made, the Director shall cause a notice inviting submissions to be published in a newspaper having general circulation in the area

where the nursing home is located or intended to be located and the notice shall,

- (a) contain an explanation of the request being made and the reasons for it;
- (b) state that any person may make written submissions to the Director concerning the request; and
- (c) state that the Director will consider any submissions before making a decision.

(8) Where the Director is required to hold a public meeting, the notice required by subsection (7) shall be published at least thirty days before the public meeting is held and shall also invite any person interested in making oral submissions to attend the meeting and express his or her opinions and recommendations concerning the request. Idem

(9) Where the request concerns an existing nursing home, the Director shall give a copy of the notice described in subsection (5) to the licensee and the licensee shall cause it to be posted in a conspicuous place in the nursing home. Idem

(10) The Director shall consider any submissions received under this section before making a decision concerning a matter described in subsection (1) or (2). Submissions
to be
considered

5. Clauses 5 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (d) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home is not being or will not be operated in accordance with the law and with honesty and integrity;
- (e) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the licensee, officers, directors or persons are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services;
- (f) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable

grounds for belief that the home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents;

- (g) the licensee has ceased operating the nursing home for a period of at least six months and is not taking reasonable steps to prepare the nursing home to re-open;
- (h) the licensee is a corporation described in subsection 4c (1) that has permitted an issue or transfer contrary to that subsection;
- (i) a corporation or its officers or directors have failed to make a report or statement to the Director, contrary to section 4d;
- (j) a person who has a security interest in a licence has exercised that interest contrary to subsection 4e (1) without the approval of the Director; or
- (k) the licensee has entered into a contract described in subsection 4f (1) without the approval of the Director.

6. Section 7 of the said Act is amended by adding thereto the following subsections:

Idem

(2a) A licensee who requires a hearing shall provide proof with the notice requiring a hearing that the licensee has mailed or delivered to the residents' council and has posted in a prominent place in the nursing home a copy of the Director's notice with written reasons therefor and a copy of the notice requiring a hearing.




Opportunity
to comply


(4a) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the licence, that it would be just and reasonable to give the licensee that opportunity and that delaying the hearing will not adversely affect the health, safety or welfare of the residents.



Exception
for
competition

(7) This section does not apply to an applicant seeking the issue or the undertaking for the issue of a licence where in the

Director's opinion another applicant better meets the Director's conditions for the issue of the licence. 

7.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

(1) The following are parties before the Board under this Act,  Parties


- (a) the Director;
- (b) the applicant or the licensee who has required the hearing; 
- (c) any resident or group of residents who request party status;
- (d) any employee or group of employees who request party status; and 
- (e) any other person the Board may specify.


(2) Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

(2) The Board may permit any person who is not a party before it, including a resident, a representative of a resident, an employee of a nursing home or any other person who may be affected by its decision, to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent. Submissions

(3) Subsection 8 (3) of the said Act is amended by striking out “An applicant or licensee who is” in the first line and by inserting after “subsection (1)” in the second line “and a person who is permitted to make submissions to the Board under subsection (2)”.

(4) Subsection 8 (7) of the said Act is amended by striking out “and heard the evidence and argument of the parties” in the third and fourth lines and inserting in lieu thereof “heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2)”.

8. Section 11 of the said Act is repealed. 


9.—(1) Subsection 12 (1) of the said Act is amended by striking out “legal representatives where the residents are unable so to do” in the fourth and fifth lines and inserting in lieu thereof “representatives”. 

(2) Subsection 12 (3) of the said Act is amended by inserting after “revoked” in the first line “and the revocation becomes final or where the nursing home is otherwise being operated without a licence”.



10.—(1) Subsection 13 (2) of the said Act is repealed and the following substituted therefor:

Relief in
special
cases

(2) Where, in the opinion of the Director, special circumstances warrant reducing or increasing the facilities, services for residents or bed capacity required in an extended care unit under subsection (1), the Director may, by order, authorize the reducing or increasing of the said facilities, services for residents or bed capacity to such amount, for such times and under such conditions as are specified in the order. 


(2) Section 13 of the said Act is amended by adding thereto the following subsections:

Agreement
for extra
services

(3) The Minister may enter into an agreement with a licensee for the provision of services in addition to those provided for under this Act and the regulations.



Notice of
services

(4) Upon entering into an agreement with the Minister under subsection (3), the licensee shall give a written notice to the residents' council and to each resident or his or her representative of the additional services to be provided. 

11.—(1) Section 14 of the said Act is amended by striking out “or” at the end of clause (b) and by adding thereto the following clauses:

- (d) for services entered into under an agreement described in subsection 13 (3), the amount provided for by the agreement;
- (e) for services not mentioned in clauses (a) through (c) that are designated by the regulations, the amount prescribed by the regulations; or
- (f) for services not mentioned in clauses (a) through (e), the amount provided for under written agreements for those services between the licensee and the individual residents.

(2) The said section 14 is further amended by adding thereto the following subsections:

Idem

(2) The Director may permit a licensee to charge a specific amount greater than the amount prescribed by the regulations

for a service described in clause (1) (e) where the licensee demonstrates to the Director that the actual cost of providing the service is greater than the amount prescribed by the regulations.

➡ (3) The licensee shall provide each resident or representative of the resident with an itemized quarterly statement of moneys held by the nursing home on behalf of the resident and charges made to the resident for services not mentioned in clauses (1) (a) through (c). ⬆

Quarterly
statements

12. Section 15 of the said Act is repealed and the following substituted therefor:

15.—(1) Where any payment referred to in clause 14 (1) (a) or (d) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14 or the service has not been rendered or has been inadequately rendered, the Minister may,

Recovery
of excess
payment

- (a) withhold payments due to the licensee to recover the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) bring an action to recover from the licensee that amount, with costs, by action in a court of competent jurisdiction.

(2) Where any payment referred to in clause 14 (1) (b), (c), (e) or (f) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14, the service has not been rendered or has been inadequately rendered or in the case of a service described in clause 14 (1) (f) there was no written agreement, the Minister may,

Idem

- (a) order the licensee to pay back to the person from whom it was accepted the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) withhold payments due to the licensee for the purpose of recovering the excess payment or the amount for which no service or inadequate service was rendered and pay the amount recovered to the person from whom it was accepted by or on behalf of the licensee.

⬇ **13.—**(1) Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

Inspection

(1) An inspector without a warrant at any time may enter upon the premises, including the business premises, of a nursing home to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(2) Subsection 17 (2) of the said Act is amended by striking out “may at any reasonable time” in the fourth line and inserting in lieu thereof “without a warrant at any reasonable time may”.

(3) Section 17 of the said Act is amended by adding thereto the following subsection:

Warrant

(2a) No inspector shall enter any room or place that is not in a nursing home and that is actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(4) Subsection 17 (3) of the said Act is repealed and the following substituted therefor:

Powers on
inspection

(3) Upon an inspection under this section, the inspector,

- (a) is entitled at any reasonable time to free access to all books of account, documents, bank accounts, vouchers, correspondence and records, including payroll records, records of staff hours worked, medical and drug records and any other records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations;
- (b) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove any material referred to in clause (a) that relates to the purpose of the inspection in order to make a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person whose premises are being inspected;
- (c) may inspect the premises and operations;
- (d) may examine or test samples of substances to ensure that the regulations are being complied with; and
- (e) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may

remove a substance or a sample of a substance referred to in clause (d) in order to conduct further tests, for any purpose reasonably necessary to carry out effectively the purposes of this Act.

(3a) No person shall obstruct the inspector or withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection.

Not to obstruct inspector

(5) Section 17 of the said Act is further amended by adding thereto the following subsection:

(4a) A certificate as to the result of any test that contains the name and a statement of the qualifications of the person who conducted the test and purports to be signed by that person is, without proof of the office or signature of that person, receivable in evidence as *prima facie* proof of the facts stated in the certificate for all purposes in any proceeding or prosecution if it has been served on any party or defendant to the proceeding or prosecution within a reasonable time before the proceeding or trial in which it is to be adduced.

Admissibility of test results

(6) Subsection 17 (5) of the said Act is repealed.

14. The said Act is further amended by adding thereto the following sections:

17a.—(1) A person other than a resident who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect shall forthwith report the suspicion and the information upon which it is based to the Director.

Reporting of harm to resident

(2) No person shall dismiss, discipline or penalize another person because,

Protection of persons reporting

- (a) a report has been made to the Director under subsection (1);
- (b) the Director has been advised of a breach of this Act or the regulations; or
- (c) the Director has been advised of any other matter concerning the care of a resident or the operation of a nursing home that the person advising believes ought to be reported to the Director,

unless the other person acts maliciously or without reasonable grounds.

- Idem (3) No person shall coerce, intimidate or attempt to coerce or intimidate another person because information described in clause (2) (a), (b) or (c) has been given to the Director. ➡
- Idem (4) No person shall include in a report to the Director under subsection (1) information the person knows to be false.
- Duty on practitioners R.S.O. 1980, c. 196 (5) Notwithstanding that the information on which a report may be based is confidential or privileged, subsection (1) also applies to a legally qualified medical practitioner or a person registered under the *Health Disciplines Act* to practice a health discipline and no action for making the report shall be commenced against a practitioner or person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion.
- Privilege of solicitor (6) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client. ➡
- Director to investigate (7) The Director shall cause any report made under subsection (1) to be investigated forthwith after receiving it. ➡
- Licensee to forward complaints **17b.**—(1) A licensee shall forward forthwith on receipt to the Director any written complaint the licensee receives concerning the care of a resident or the operation of the nursing home. ➡
- Statement of licensee (2) The licensee shall include with a complaint forwarded under subsection (1) a statement of reply, setting out,
- (a) what the licensee has done to remedy the complaint;
 - (b) what the licensee proposes to do to remedy the complaint and within what time the licensee proposes to do it; or
 - (c) that the licensee believes the complaint to be unfounded and the reasons for the belief.
- Director to investigate (3) The Director shall cause any complaint received under subsection (1) to be investigated forthwith after receiving it.
- Immediate investigation **17c.** Where the Director receives a report from any source that gives the Director reasonable grounds to believe that the health, safety or welfare of a resident may be at risk, the Director shall cause an investigation to be commenced and the nursing home in which that resident lives to be visited forthwith.

17d.—(1) A licensee shall, at the end of each year as defined in the regulations, prepare or cause to be prepared for each of the licensee's nursing homes statements of the operation and financial affairs of that nursing home during the preceding year. Financial reporting

(2) The statements shall include, Idem

- (a) a statement of the revenue received by the nursing home, or by the licensee in respect of the nursing home, from the Ministry, from residents and from other sources;
- (b) a statement, broken down by categories, of the expenditures of the nursing home, or of the licensee in respect of the nursing home, including,
 - (i) payments to or for the benefit of the licensee, persons associated with the licensee and persons who provide management or administrative services in respect of the nursing home,
 - (ii) expenditures in respect of staff salaries and benefits, broken down by categories of staff,
 - (iii) expenditures for food, housekeeping, laundry and other goods and services,
 - (iv) payments made and amounts charged or recorded for depreciation, debt carrying charges, rent, and business and realty taxes;
- (c) any other information respecting the operation and financial affairs of the nursing home that is prescribed by the regulations.

(3) Where a licensee alone or with associates owns or has a controlling interest in more than one nursing home, the statements required under subsection (1) shall include, in addition to statements prepared for each of the licensee's nursing homes, a consolidated statement of the operation and financial affairs of all of those nursing homes and that consolidated statement shall include the information described in subsection (2). Idem

(4) The statements shall be made in the form and manner prescribed by the regulations and shall be certified by the licensee's auditor. Idem

Statement to
be filed

(5) A licensee shall file the statements referred to in subsection (1) with the Minister within ninety days after the end of the licensee's fiscal year.

Posting
and public
inspection

(6) The licensee shall post a copy of the statements referred to in subsection (1) in a prominent place in the nursing home.

Residents'
council

17e.—(1) Whenever at least three persons who are either residents in a nursing home or representatives of residents so request, a residents' council shall be established for that nursing home.

Idem

(2) The residents' council shall be established and conducted in the manner provided for by the regulations.

Members

(3) Each resident, or where the resident is unable to participate, the resident's representative may be a member of the residents' council and, in addition, a person selected by the resident or the representative may be a member of the residents' council.

Idem

(4) The Minister, at the request of a residents' council, may appoint no more than three persons to be members of the residents' council and those persons shall serve as members at the pleasure of the residents' council.

Idem

(5) The persons appointed under subsection (4) shall be persons who live in the area in which the nursing home is located and who are not employed by and do not have a contractual relationship with the Ministry.

Idem

(6) No licensee or where the licensee is a corporation, no officer, director or person with a controlling interest in it and no member of the staff of a nursing home shall be a member of a residents' council.


Obligation of
administrator

(7) Every administrator shall in respect of each nursing home that he has charge of, within ninety days of being licensed, convene a meeting of the residents or their representatives, to advise the residents that they have a right to form a residents' council.




Idem

(8) Where a residents' council is not established in a nursing home after the convening of a meeting under subsection (7), the administrator shall convene such a meeting at least once each year thereafter until a residents' council is established.

(9) Where a meeting is held under subsection (7) or (8), ^{Idem} the administrator shall notify the Director within thirty days of the results of the meeting.

(10) Where three or more residents or their representatives ^{Idem} at any time express an interest to their administrator in forming a residents' council, the administrator shall forthwith notify the Director of the interest and assist the residents or their representatives in forming a council within sixty days of the request. 

17f. It is the function of a residents' council and it has the ^{Powers of residents' council} power to,

- (a) advise residents respecting their rights and obligations under this Act;
- (b) advise residents respecting the rights and obligations of the licensee under this Act; 
- (c) meet regularly with the licensee to,
 - (i) review Ministry inspection reports,
 - (ii) review the allocation of money for food, supplies and services provided by the nursing home,
 - (iii) review the statements filed under section 17d when they are filed, and
 - (iv) review the operation of the nursing home;
- (d) attempt to mediate and resolve any dispute between a resident and the licensee; and 
- (e) report to the Minister any concerns and recommendations that in its opinion ought to be brought to the Minister's attention. 

17g.—(1) The Minister, with the consent of a residents' council, may appoint a residents' council assistant to assist the residents' council in carrying out its responsibilities. ^{Residents' council assistant}

(2) In carrying out his or her duties, a residents' council ^{Idem} assistant shall take instructions from and report to the residents' council.

Entry
not refused

(3) No person shall refuse entry to a nursing home to a residents' council assistant or obstruct a residents' council assistant.

Licensee
to
co-operate

17h. The licensee shall co-operate with the residents' council and the residents' council assistant and shall provide the information, including financial information, and assistance to them provided for by the regulations.

Committee,
etc., not
personally
liable

17i. No proceeding shall be commenced against a member of a residents' council or a residents' council assistant for any act done in accordance with section 17f, unless the act is done maliciously or without reasonable grounds.

15. Section 19 of the said Act is repealed and the following substituted therefor:

Liability
of licensee

19.—(1) In addition to any other liability for an offence under this Act or the regulations, the licensee is guilty of an offence for the contravention of any provision of this Act except subsection 17a (1) or of the regulations that creates an obligation in respect of a nursing home,

(a) without imposing a duty on a specified person to carry it out; or

(b) by imposing a duty on a specified person other than the licensee to carry it out.

Idem

(2) Notwithstanding subsection (1), a licensee is guilty of an offence under subsection (1) if the licensee contravenes subsection 17a (1).

Penalty

19a. Any person who contravenes any provision of this Act or the regulations, except subsection 12 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and not more than \$10,000 for each subsequent offence.

Evidence
of disabled
resident

19b.—(1) Where a party to a proceeding under section 19 or 19a wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is unable to attend the proceeding, the party may apply to a provincial judge for an order appointing a justice of the peace to attend upon the witness and to take the evidence of the witness under oath.

Idem

(2) Where a party to a proceeding before the Board under this Act wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is

unable to attend the proceeding, the members of the Board who are holding the hearing, at the request of the party, may attend upon the witness and take the evidence of the witness.

(3) A medical report signed by a legally qualified medical practitioner stating that the practitioner believes the resident is unable to attend a proceeding by reason of age, infirmity or physical disability is *prima facie* proof of the inability of the witness to attend the proceeding.

Medical
report
sufficient
proof

(4) A person shall not take evidence from a resident under subsection (1) or (2) unless reasonable notice of the time for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the resident.

Opportunity
to examine

(5) A transcript of the evidence of a resident taken under subsection (1) and certified as correct by the person who recorded it may be read in evidence in a proceeding under this Act.

Transcript
as evidence

16.—(1) Clause 20 (j) of the said Act is amended by adding at the end thereof “and governing their form and content”.

(2) Section 20 of the said Act is amended by adding thereto the following clauses:

(ma) respecting the form and content of requests for proposals for the issuing of nursing home licenses;

.

(ta) designating services to be provided to residents by licensees for which no more than a prescribed amount may be charged and prescribing that amount;

(tb) defining “year” for the purposes of subsection 17d (1) (financial reporting), prescribing other information respecting the operation and financial affairs of the nursing home for the purposes of clause 17d (2) (c), and prescribing the form and manner in which statements shall be made;

(tc) respecting the establishment and conduct of residents’ councils;

(td) respecting the information, financial information and assistance a licensee shall give to a residents’ council and a residents’ council assistant.

Commence-
ment

17. This Act comes into force on the day it receives Royal Assent.

Short title

18. The short title of this Act is the *Nursing Homes Amendment Act, 1987*.

Bill 176

*(Chapter 20
Statutes of Ontario, 1987)*

An Act to amend the Nursing Homes Act

The Hon. M. Elston
Minister of Health

<i>1st Reading</i>	December 16th, 1986
<i>2nd Reading</i>	February 4th, 1987
<i>3rd Reading</i>	May 25th, 1987
<i>Royal Assent</i>	May 27th, 1987

Bill 176

1987

An Act to amend the Nursing Homes Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 55, section 223, is further amended by adding thereto the following clauses:

(ba) “equity share” means a share of a class of shares of a corporation that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

.

(j) “security interest” means an agreement between a person and a licensee that secures the licensee’s payment or performance of an obligation by giving the person an interest in the licence.

(2) The said section 1 is further amended by adding thereto the following subsections:

(2) A person shall be deemed to have a controlling interest in a corporation if the person alone or with an associate directly or indirectly beneficially owns or controls,

Controlling
interest

(a) issued and outstanding equity shares in the corporation in an amount to permit the person to direct the management and policies of the corporation; or

(b) 10 per cent or more of the issued and outstanding equity shares in the corporation.

(3) One person shall be deemed to be an associate of another person if,

Associates

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partnership of which the other person is a partner;
- (c) one person is a corporation that is controlled directly or indirectly by the other person;
- (d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other person;
- (e) both persons are members of a voting trust where the trust relates to shares of a corporation;
- (f) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or
- (g) both persons are associates within the meaning of clauses (a) to (f) of the same person.

Calculating
shares

(4) In calculating the total number of equity shares of a corporation beneficially owned or controlled for the purposes of this Act, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as having the number of shares equal to the total number of votes it carries.

2. The said Act is amended by adding thereto the following section:

Fundamental
principle

1a.—(1) The fundamental principle to be applied in the interpretation of this Act and the regulations is that a nursing home is primarily the home of its residents and as such it is to be operated in such a way that the physical, psychological, social, cultural and spiritual needs of each of its residents are adequately met and that its residents are given the opportunity to contribute, in accordance with their ability, to the physical, psychological, social, cultural and spiritual needs of others.

Residents'
bill of
rights

(2) Every licensee shall ensure that the following rights of residents are fully respected and promoted:

1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's dignity and individuality and to be free from mental and physical abuse.
2. Every resident has the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.
3. Every resident has the right to be told who is responsible for and who is providing the resident's direct care.
4. Every resident has the right to be afforded privacy in treatment and in caring for his or her personal needs.
5. Every resident has the right to keep in his or her room and display personal possessions, pictures and furnishings in keeping with safety requirements and other residents' rights.
6. Every resident has the right,
 - i. to be informed of his or her medical condition, treatment and proposed course of treatment,
 - ii. to give or refuse consent to treatment, including medication, in accordance with the law and to be informed of the consequences of giving or refusing consent,
 - iii. to have the opportunity to participate fully in making any decision and obtaining an independent medical opinion concerning any aspect of his or her care, including any decision concerning his or her admission, discharge or transfer to or from a nursing home, and
 - iv. to have his or her medical records kept confidential in accordance with the law.
7. Every resident has the right to receive reactivation and assistance towards independence consistent with his or her requirements.
8. Every resident who is being considered for restraints has the right to be fully informed about

the procedures and the consequences of receiving or refusing them.

9. Every resident has the right to communicate in confidence, to receive visitors of his or her choice and to consult in private with any person without interference.
10. Every resident whose death is likely to be imminent has the right to have members of the resident's family present twenty-four hours per day.
11. Every resident has the right to designate a person to receive information concerning any transfer or emergency hospitalization of the resident and where a person is so designated to have that person so informed forthwith.
12. Every resident has the right to exercise the rights of a citizen and to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the residents' council, nursing home staff, government officials or any other person inside or outside the nursing home, without fear of restraint, interference, coercion, discrimination or reprisal.
13. Every resident has the right to form friendships, to enjoy relationships and to participate in the residents' council.
14. Every resident has the right to meet privately with his or her spouse in a room that assures privacy and where both spouses are residents in the same nursing home, they have a right to share a room according to their wishes, if an appropriate room is available.
15. Every resident has a right to pursue social, cultural, religious and other interests, to develop his or her potential and to be given reasonable provisions by the nursing home to accommodate these pursuits.
16. Every resident has the right to be informed in writing of any law, rule or policy affecting the operation of the nursing home and of the procedures for initiating complaints.
17. Every resident has the right to manage his or her own financial affairs where the resident is able to do

so, and where the resident's financial affairs are managed by the nursing home, to receive a quarterly accounting of any transactions undertaken on his or her behalf and to be assured that the resident's property is managed solely on the resident's behalf.

- 18. Every resident has the right to live in a safe and clean environment.
- 19. Every resident has the right to be given access to protected areas outside the nursing home in order to enjoy outdoor activity, unless the physical setting makes this impossible.

(3) Without restricting the generality of subsection (1), this Act and the regulations are to be interpreted so as to advance the objective that the resident's rights set out in subsection (2) be respected.

Further
guide to
interpretation

(4) There shall be a written contract relating to the admission of every resident to a nursing home.

Written
contract

(5) A contract entered into in accordance with subsection (4) or (8) shall include,

Provisions
to be
included

- (a) a statement of the rights of the resident under subsection (2) and a statement by the licensee agreeing to respect and promote those rights;
- (b) the information necessary to enable the resident to make a complaint regarding the nursing home to the Ministry;
- (c) any agreement for additional services and the charges for those services; and
- (d) the name and address of the person who will act, if necessary, as the representative of the resident for the purposes of this Act and the regulations.

(6) A contract entered into in accordance with subsection (4), (8) or (9) shall be reviewed annually by the resident or the resident's representative and the licensee.

Annual
review

(7) Every licensee shall post a copy of subsections (1), (2), (4), (5) and (6) in a prominent place in the nursing home.

Posting of
information

(8) Subject to subsection (9), every licensee shall, within ninety days after the coming into force of this Act, enter into

Transition

a written contract with every person who is a resident at that time and has not entered into a contract under subsection (4), relating to the services provided by the nursing home.

Idem

(9) Where either party described in subsection (8) refuses to enter into a written contract, the licensee shall note that refusal in the resident's records and a contract between the licensee and the resident shall be deemed to have been made containing the provisions enumerated in clauses (5) (a) and (b) and, with the concurrence of the resident, containing the provisions enumerated in clauses (5) (c) and (d).

3.—(1) Subsection 4 (1) of the said Act is amended by striking out “subsection (2)” in the first line and inserting in lieu thereof “the following subsections”.

(2) Subsection 4 (2) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(3) Subsection 4 (3) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(4) Subclause 4 (4) (d) (ii) of the said Act is amended by striking out “or” and inserting in lieu thereof “and”.

(5) Section 4 of the said Act is amended by adding thereto the following subsections:

Idem

(4a) In considering under subsection (2) whether it is in the public interest to grant a licence to establish, operate or maintain a nursing home in an area, the Minister shall also take into account,

(a) the effect that granting the licence would have on the concentration of ownership of nursing homes,

(i) in the area,

(ii) in the area and any other area, or

(iii) in Ontario; and

(b) the effect that granting the licence would have on the balance between non-profit and profit-oriented nursing homes,

(i) in the area,

(ii) in the area and any other area, or

(iii) in Ontario.

(4b) For the purpose of clause (4a) (b), the Minister shall ^{Idem} announce, annually, in the Legislature the desired balance between non-profit and profit-oriented nursing homes.

(6) Subsection 4 (5) of the said Act is repealed and the following substituted therefor:

(5) Subject to section 7, the Director may refuse to issue a ^{Grounds for refusal} licence where in the Director's opinion,

- (a) the proposed nursing home or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;
- (b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will not be operated in accordance with the law and with honesty and integrity;
- (c) the applicant or, where the applicant is a corporation, its officers or directors or the persons with a controlling interest in it are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services; or
- (d) the past conduct of the applicant, or where the applicant is a corporation, of its officers, directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will be operated in a manner that is prejudicial to the health, safety or welfare of its residents.

(7) Subsection 4 (8) of the said Act is repealed.

4. The said Act is further amended by adding thereto the following sections:

4a.—(1) The Director may undertake to issue a licence to ^{Undertake to issue licence} an applicant on condition that the applicant agrees to satisfy the conditions specified by the Director.

Issue licence,
if conditions
met

(2) Where the Director determines that the applicant has complied with the specified conditions, the Director shall issue the licence.

Notice
to cancel
undertaking

(3) Where the Director determines that the applicant has not complied with the specified conditions, the Director by written notice to the applicant may propose to cancel the undertaking.

Request
for review

(4) The applicant may submit to the Minister a written request for review asking that the Minister extend the undertaking and amend its conditions.

Minister's
decision

(5) Where the Minister receives a request for review within fifteen days after delivery of the notice under subsection (3), the Minister may extend the undertaking and amend its conditions or may cancel the undertaking.

Undertaking
cancelled

(6) Where the Minister does not receive a request for review within fifteen days after delivery of the notice under subsection (3), the undertaking shall be deemed to be cancelled.

Surrender
and issue
of licence

4b.—(1) Where a licensee notifies the Director that the licensee intends to surrender a licence to the Director on condition that the Director issue in its place a licence to a specified person, the specified person may apply for the issuance of the licence under this Act.

Idem

(2) Subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications to an application for a licence under subsection (1).

Idem

(3) Upon receiving notice that the Director intends to approve an application under subsection (1), the licensee shall surrender the licence and the Director shall issue a licence to the applicant.

Share
transfer
R.S.O. 1980,
c. 466

4c.—(1) Where a corporation that is a private company as defined in the *Securities Act* is a licensee, it shall not permit an issue or transfer of equity shares of its capital stock that has the effect of changing the ownership or controlling interest in the corporation without the prior approval of the Director.

Idem

(2) In deciding whether to approve an issue or a transfer of shares under subsection (1), the Director shall treat the corporation as proposed to be constituted after the transfer as if it were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

4d.—(1) Where a licensee is a corporation, the licensee shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Duty of corporation to notify Director

(2) Where a corporation has an interest in a licence, and the corporation or its officers or directors have reason to believe that an issue or transfer of equity shares of its capital stock or the happening of a condition by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the person shall so notify the Director forthwith.

Idem

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence or its officers or directors to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of equity shares of capital stock in the corporation, which statement shall contain the information that in the opinion of the Director is reasonably necessary to enable the Director to determine,

Statement required

- (a) what persons, if any, have a controlling interest in the corporation; and
- (b) what persons, if any, own or beneficially own directly or indirectly the persons or a controlling interest in the persons mentioned in clause (a).

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the Director's opinion, it is reasonably necessary for the purposes set out in subsection (3).

Idem

4e.—(1) A person who has a security interest in a licence shall not exercise that interest without the approval of the Director if exercise of the interest would change the ownership or controlling interest in the licence.

Exercise of security interest

(2) In deciding whether to approve an exercise of a security interest under subsection (1), the Director shall treat the person seeking to exercise the interest as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

Matters to be considered

4f.—(1) A licensee shall not enter into a contract whose effect is to change the management of a nursing home or the ownership or controlling interest in a licence without the approval of the Director.

Management contracts

Matters
to be
considered

(2) In deciding whether to approve a contract described in subsection (1), the Director shall treat the person who would take over the management of the nursing home or the ownership or controlling interest in the licence under the contract as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

No decision
without
public
submissions

4g.—(1) The Director shall not issue a licence, undertake to issue a licence under section 4a, reissue a licence under section 4b or approve an issue or transfer of shares under section 4c unless the public has been given notice of the request to do so and an opportunity to make written and oral submissions in accordance with this section.

Idem

(2) The Director shall not renew a licence unless the public has been given notice of the request to do so and an opportunity to make written submissions in accordance with this section.

Idem

(3) Without limiting the requirement on the Director to give the public an opportunity for oral submissions under subsection (1), the Director shall ensure that for each nursing home at least once in every five years the public is given notice of the request to carry out a matter described in subsection (1) or (2) and an opportunity to make oral submissions with respect to it in accordance with this section.

Public
meeting

(4) Where the opportunity for oral submissions is required under subsection (1) or (3), the Director shall cause a public meeting to be held concerning the request before making a decision and that meeting shall be held in the area where the nursing home is located.

Idem

(5) Notwithstanding subsection (4), where the public meeting concerns an issue or transfer of shares under section 4c in respect of a licensee that owns or controls more than one nursing home and those nursing homes are located in different areas, the Director shall determine where the meeting shall be held.

Idem

(6) If the Director is not able to chair the public meeting, the Director shall designate a representative of the Ministry to do so, and that representative shall prepare and give the Director a written report of the proceedings.

Notice

(7) At least thirty days before a decision in relation to a matter described in subsection (1) or (2) is to be made, the Director shall cause a notice inviting submissions to be published in a newspaper having general circulation in the area

where the nursing home is located or intended to be located and the notice shall,

- (a) contain an explanation of the request being made and the reasons for it;
- (b) state that any person may make written submissions to the Director concerning the request; and
- (c) state that the Director will consider any submissions before making a decision.

(8) Where the Director is required to hold a public meeting, the notice required by subsection (7) shall be published at least thirty days before the public meeting is held and shall also invite any person interested in making oral submissions to attend the meeting and express his or her opinions and recommendations concerning the request. Idem

(9) Where the request concerns an existing nursing home, the Director shall give a copy of the notice described in subsection (5) to the licensee and the licensee shall cause it to be posted in a conspicuous place in the nursing home. Idem

(10) The Director shall consider any submissions received under this section before making a decision concerning a matter described in subsection (1) or (2). Submissions to be considered

5. Clauses 5 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (d) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home is not being or will not be operated in accordance with the law and with honesty and integrity;
- (e) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the licensee, officers, directors or persons are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services;
- (f) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable

grounds for belief that the home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents;

- (g) the licensee has ceased operating the nursing home for a period of at least six months and is not taking reasonable steps to prepare the nursing home to re-open;
- (h) the licensee is a corporation described in subsection 4c (1) that has permitted an issue or transfer contrary to that subsection;
- (i) a corporation or its officers or directors have failed to make a report or statement to the Director, contrary to section 4d;
- (j) a person who has a security interest in a licence has exercised that interest contrary to subsection 4e (1) without the approval of the Director; or
- (k) the licensee has entered into a contract described in subsection 4f (1) without the approval of the Director.

6. Section 7 of the said Act is amended by adding thereto the following subsections:

Idem

(2a) A licensee who requires a hearing shall provide proof with the notice requiring a hearing that the licensee has mailed or delivered to the residents' council and has posted in a prominent place in the nursing home a copy of the Director's notice with written reasons therefor and a copy of the notice requiring a hearing.

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Opportunity
to comply

(4a) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the licence, that it would be just and reasonable to give the licensee that opportunity and that delaying the hearing will not adversely affect the health, safety or welfare of the residents.

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Exception
for
competition

(7) This section does not apply to an applicant seeking the issue or the undertaking for the issue of a licence where in the

Director's opinion another applicant better meets the Director's conditions for the issue of the licence.

7.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

(1) The following are parties before the Board under this Act, — ^{Parties}

- (a) the Director;
- (b) the applicant or the licensee who has required the hearing;
- (c) any resident or group of residents who request party status;
- (d) any employee or group of employees who request party status; and
- (e) any other person the Board may specify.

(2) Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

(2) The Board may permit any person who is not a party ^{Submissions} before it, including a resident, a representative of a resident, an employee of a nursing home or any other person who may be affected by its decision, to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent.

(3) Subsection 8 (3) of the said Act is amended by striking out “An applicant or licensee who is” in the first line and by inserting after “subsection (1)” in the second line “and a person who is permitted to make submissions to the Board under subsection (2)”.

(4) Subsection 8 (7) of the said Act is amended by striking out “and heard the evidence and argument of the parties” in the third and fourth lines and inserting in lieu thereof “heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2)”.

8. Section 11 of the said Act is repealed.

9.—(1) Subsection 12 (1) of the said Act is amended by striking out “legal representatives where the residents are unable so to do” in the fourth and fifth lines and inserting in lieu thereof “representatives”.

(2) Subsection 12 (3) of the said Act is amended by inserting after “revoked” in the first line “and the revocation becomes final or where the nursing home is otherwise being operated without a licence”.

10.—(1) Subsection 13 (2) of the said Act is repealed and the following substituted therefor:

Relief in
special
cases

(2) Where, in the opinion of the Director, special circumstances warrant reducing or increasing the facilities, services for residents or bed capacity required in an extended care unit under subsection (1), the Director may, by order, authorize the reducing or increasing of the said facilities, services for residents or bed capacity to such amount, for such times and under such conditions as are specified in the order.

(2) Section 13 of the said Act is amended by adding thereto the following subsections:

Agreement
for extra
services

(3) The Minister may enter into an agreement with a licensee for the provision of services in addition to those provided for under this Act and the regulations.

Notice of
services

(4) Upon entering into an agreement with the Minister under subsection (3), the licensee shall give a written notice to the residents' council and to each resident or his or her representative of the additional services to be provided.

11.—(1) Section 14 of the said Act is amended by striking out “or” at the end of clause (b) and by adding thereto the following clauses:

- (d) for services entered into under an agreement described in subsection 13 (3), the amount provided for by the agreement;
- (e) for services not mentioned in clauses (a) through (c) that are designated by the regulations, the amount prescribed by the regulations; or
- (f) for services not mentioned in clauses (a) through (e), the amount provided for under written agreements for those services between the licensee and the individual residents.

(2) The said section 14 is further amended by adding thereto the following subsections:

Idem

(2) The Director may permit a licensee to charge a specific amount greater than the amount prescribed by the regulations

for a service described in clause (1) (e) where the licensee demonstrates to the Director that the actual cost of providing the service is greater than the amount prescribed by the regulations.

(3) The licensee shall provide each resident or representative of the resident with an itemized quarterly statement of moneys held by the nursing home on behalf of the resident and charges made to the resident for services not mentioned in clauses (1) (a) through (c).

Quarterly
statements

12. Section 15 of the said Act is repealed and the following substituted therefor:

15.—(1) Where any payment referred to in clause 14 (1) (a) or (d) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14 or the service has not been rendered or has been inadequately rendered, the Minister may,

Recovery
of excess
payment

- (a) withhold payments due to the licensee to recover the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) bring an action to recover from the licensee that amount, with costs, by action in a court of competent jurisdiction.

(2) Where any payment referred to in clause 14 (1) (b), (c), (e) or (f) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14, the service has not been rendered or has been inadequately rendered or in the case of a service described in clause 14 (1) (f) there was no written agreement, the Minister may,

Idem

- (a) order the licensee to pay back to the person from whom it was accepted the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) withhold payments due to the licensee for the purpose of recovering the excess payment or the amount for which no service or inadequate service was rendered and pay the amount recovered to the person from whom it was accepted by or on behalf of the licensee.

13.—(1) Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

Inspection

(1) An inspector without a warrant at any time may enter upon the premises, including the business premises, of a nursing home to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(2) Subsection 17 (2) of the said Act is amended by striking out “may at any reasonable time” in the fourth line and inserting in lieu thereof “without a warrant at any reasonable time may”.

(3) Section 17 of the said Act is amended by adding thereto the following subsection:

Warrant

(2a) No inspector shall enter any room or place that is not in a nursing home and that is actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(4) Subsection 17 (3) of the said Act is repealed and the following substituted therefor:

Powers on
inspection

(3) Upon an inspection under this section, the inspector,

- (a) is entitled at any reasonable time to free access to all books of account, documents, bank accounts, vouchers, correspondence and records, including payroll records, records of staff hours worked, medical and drug records and any other records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations;
- (b) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove any material referred to in clause (a) that relates to the purpose of the inspection in order to make a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person whose premises are being inspected;
- (c) may inspect the premises and operations;
- (d) may examine or test samples of substances to ensure that the regulations are being complied with; and
- (e) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may

remove a substance or a sample of a substance referred to in clause (d) in order to conduct further tests, for any purpose reasonably necessary to carry out effectively the purposes of this Act.

(3a) No person shall obstruct the inspector or withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection.

Not to
obstruct
inspector

(5) Section 17 of the said Act is further amended by adding thereto the following subsection:

(4a) A certificate as to the result of any test that contains the name and a statement of the qualifications of the person who conducted the test and purports to be signed by that person is, without proof of the office or signature of that person, receivable in evidence as *prima facie* proof of the facts stated in the certificate for all purposes in any proceeding or prosecution if it has been served on any party or defendant to the proceeding or prosecution within a reasonable time before the proceeding or trial in which it is to be adduced.

Admissibility
of test results

(6) Subsection 17 (5) of the said Act is repealed.

14. The said Act is further amended by adding thereto the following sections:

17a.—(1) A person other than a resident who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect shall forthwith report the suspicion and the information upon which it is based to the Director.

Reporting
of harm to
resident

(2) No person shall dismiss, discipline or penalize another person because,

Protection
of persons
reporting

- (a) a report has been made to the Director under subsection (1);
- (b) the Director has been advised of a breach of this Act or the regulations; or
- (c) the Director has been advised of any other matter concerning the care of a resident or the operation of a nursing home that the person advising believes ought to be reported to the Director,

unless the other person acts maliciously or without reasonable grounds.

- Idem (3) No person shall coerce, intimidate or attempt to coerce or intimidate another person because information described in clause (2) (a), (b) or (c) has been given to the Director.
- Idem (4) No person shall include in a report to the Director under subsection (1) information the person knows to be false.
- Duty on practitioners
R.S.O. 1980, c. 196 (5) Notwithstanding that the information on which a report may be based is confidential or privileged, subsection (1) also applies to a legally qualified medical practitioner or a person registered under the *Health Disciplines Act* to practice a health discipline and no action for making the report shall be commenced against a practitioner or person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion.
- Privilege of solicitor (6) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.
- Director to investigate (7) The Director shall cause any report made under subsection (1) to be investigated forthwith after receiving it.
- Licensee to forward complaints **17b.**—(1) A licensee shall forward forthwith on receipt to the Director any written complaint the licensee receives concerning the care of a resident or the operation of the nursing home.
- Statement of licensee (2) The licensee shall include with a complaint forwarded under subsection (1) a statement of reply, setting out,
- (a) what the licensee has done to remedy the complaint;
 - (b) what the licensee proposes to do to remedy the complaint and within what time the licensee proposes to do it; or
 - (c) that the licensee believes the complaint to be unfounded and the reasons for the belief.
- Director to investigate (3) The Director shall cause any complaint received under subsection (1) to be investigated forthwith after receiving it.
- Immediate investigation **17c.** Where the Director receives a report from any source that gives the Director reasonable grounds to believe that the health, safety or welfare of a resident may be at risk, the Director shall cause an investigation to be commenced and the nursing home in which that resident lives to be visited forthwith.

17d.—(1) A licensee shall, at the end of each year as defined in the regulations, prepare or cause to be prepared for each of the licensee's nursing homes statements of the operation and financial affairs of that nursing home during the preceding year. Financial reporting

(2) The statements shall include, Idem

- (a) a statement of the revenue received by the nursing home, or by the licensee in respect of the nursing home, from the Ministry, from residents and from other sources;
- (b) a statement, broken down by categories, of the expenditures of the nursing home, or of the licensee in respect of the nursing home, including,
 - (i) payments to or for the benefit of the licensee, persons associated with the licensee and persons who provide management or administrative services in respect of the nursing home,
 - (ii) expenditures in respect of staff salaries and benefits, broken down by categories of staff,
 - (iii) expenditures for food, housekeeping, laundry and other goods and services,
 - (iv) payments made and amounts charged or recorded for depreciation, debt carrying charges, rent, and business and realty taxes;
- (c) any other information respecting the operation and financial affairs of the nursing home that is prescribed by the regulations.

(3) Where a licensee alone or with associates owns or has a controlling interest in more than one nursing home, the statements required under subsection (1) shall include, in addition to statements prepared for each of the licensee's nursing homes, a consolidated statement of the operation and financial affairs of all of those nursing homes and that consolidated statement shall include the information described in subsection (2). Idem

(4) The statements shall be made in the form and manner prescribed by the regulations and shall be certified by the licensee's auditor. Idem

Statement to
be filed

(5) A licensee shall file the statements referred to in subsection (1) with the Minister within ninety days after the end of the licensee's fiscal year.

Posting
and public
inspection

(6) The licensee shall post a copy of the statements referred to in subsection (1) in a prominent place in the nursing home.

Residents'
council

17e.—(1) Whenever at least three persons who are either residents in a nursing home or representatives of residents so request, a residents' council shall be established for that nursing home.

Idem

(2) The residents' council shall be established and conducted in the manner provided for by the regulations.

Members

(3) Each resident, or where the resident is unable to participate, the resident's representative may be a member of the residents' council and, in addition, a person selected by the resident or the representative may be a member of the residents' council.

Idem

(4) The Minister, at the request of a residents' council, may appoint no more than three persons to be members of the residents' council and those persons shall serve as members at the pleasure of the residents' council.

Idem

(5) The persons appointed under subsection (4) shall be persons who live in the area in which the nursing home is located and who are not employed by and do not have a contractual relationship with the Ministry.

Idem

(6) No licensee or where the licensee is a corporation, no officer, director or person with a controlling interest in it and no member of the staff of a nursing home shall be a member of a residents' council.

Obligation of
administrator

(7) Every administrator shall in respect of each nursing home that he has charge of, within ninety days of being licensed, convene a meeting of the residents or their representatives, to advise the residents that they have a right to form a residents' council.

Idem

(8) Where a residents' council is not established in a nursing home after the convening of a meeting under subsection (7), the administrator shall convene such a meeting at least once each year thereafter until a residents' council is established.

(9) Where a meeting is held under subsection (7) or (8), the administrator shall notify the Director within thirty days of the results of the meeting. Idem

(10) Where three or more residents or their representatives at any time express an interest to their administrator in forming a residents' council, the administrator shall forthwith notify the Director of the interest and assist the residents or their representatives in forming a council within sixty days of the request. Idem

17f. It is the function of a residents' council and it has the power to, Powers of residents' council

- (a) advise residents respecting their rights and obligations under this Act;
- (b) advise residents respecting the rights and obligations of the licensee under this Act;
- (c) meet regularly with the licensee to,
 - (i) review Ministry inspection reports,
 - (ii) review the allocation of money for food, supplies and services provided by the nursing home,
 - (iii) review the statements filed under section 17d when they are filed, and
 - (iv) review the operation of the nursing home;
- (d) attempt to mediate and resolve any dispute between a resident and the licensee; and
- (e) report to the Minister any concerns and recommendations that in its opinion ought to be brought to the Minister's attention.

17g.—(1) The Minister, with the consent of a residents' council, may appoint a residents' council assistant to assist the residents' council in carrying out its responsibilities. Residents' council assistant

(2) In carrying out his or her duties, a residents' council assistant shall take instructions from and report to the residents' council. Idem

Entry
not refused

(3) No person shall refuse entry to a nursing home to a residents' council assistant or obstruct a residents' council assistant.

Licensee
to
co-operate

17h. The licensee shall co-operate with the residents' council and the residents' council assistant and shall provide the information, including financial information, and assistance to them provided for by the regulations.

Committee,
etc., not
personally
liable

17i. No proceeding shall be commenced against a member of a residents' council or a residents' council assistant for any act done in accordance with section 17f, unless the act is done maliciously or without reasonable grounds.

15. Section 19 of the said Act is repealed and the following substituted therefor:

Liability
of licensee

19.—(1) In addition to any other liability for an offence under this Act or the regulations, the licensee is guilty of an offence for the contravention of any provision of this Act except subsection 17a (1) or of the regulations that creates an obligation in respect of a nursing home,

- (a) without imposing a duty on a specified person to carry it out; or
- (b) by imposing a duty on a specified person other than the licensee to carry it out.

Idem

(2) Notwithstanding subsection (1), a licensee is guilty of an offence under subsection (1) if the licensee contravenes subsection 17a (1).

Penalty

19a. Any person who contravenes any provision of this Act or the regulations, except subsection 12 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and not more than \$10,000 for each subsequent offence.

Evidence
of disabled
resident

19b.—(1) Where a party to a proceeding under section 19 or 19a wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is unable to attend the proceeding, the party may apply to a provincial judge for an order appointing a justice of the peace to attend upon the witness and to take the evidence of the witness under oath.

Idem

(2) Where a party to a proceeding before the Board under this Act wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is

unable to attend the proceeding, the members of the Board who are holding the hearing, at the request of the party, may attend upon the witness and take the evidence of the witness.

(3) A medical report signed by a legally qualified medical practitioner stating that the practitioner believes the resident is unable to attend a proceeding by reason of age, infirmity or physical disability is *prima facie* proof of the inability of the witness to attend the proceeding.

Medical
report
sufficient
proof

(4) A person shall not take evidence from a resident under subsection (1) or (2) unless reasonable notice of the time for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the resident.

Opportunity
to examine

(5) A transcript of the evidence of a resident taken under subsection (1) and certified as correct by the person who recorded it may be read in evidence in a proceeding under this Act.

Transcript
as evidence

16.—(1) Clause 20 (j) of the said Act is amended by adding at the end thereof “and governing their form and content”.

(2) Section 20 of the said Act is amended by adding thereto the following clauses:

- (ma) respecting the form and content of requests for proposals for the issuing of nursing home licenses;
-
- (ta) designating services to be provided to residents by licensees for which no more than a prescribed amount may be charged and prescribing that amount;
- (tb) defining “year” for the purposes of subsection 17d (1) (financial reporting), prescribing other information respecting the operation and financial affairs of the nursing home for the purposes of clause 17d (2) (c), and prescribing the form and manner in which statements shall be made;
- (tc) respecting the establishment and conduct of residents’ councils;
- (td) respecting the information, financial information and assistance a licensee shall give to a residents’ council and a residents’ council assistant.

Commence-
ment

17. This Act comes into force on the day it receives Royal Assent.

Short title

18. The short title of this Act is the *Nursing Homes Amendment Act, 1987*.

Bill 177

An Act to amend the Health Facilities Special Orders Act, 1983

The Hon. M. Elston
Minister of Health



<i>1st Reading</i>	December 16th, 1986
<i>2nd Reading</i>	February 4th, 1987
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

SECTION 1. Subsection 10 (4a) replaces subsection 11 (2) of the Act which is repealed in section 2. Subsection 11 (2) of the Act provides:

(2) Notice of a hearing under this Act shall afford the licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the retention of the licence.

➡ The new subsection provides that the Board shall proceed with a hearing forthwith unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply, it would be just and reasonable to give the licensee that opportunity and delaying the hearing won't adversely affect the health or safety of persons served by the health facility. A similar change is made in Mr. Elston's bill amending the *Nursing Homes Act*. ➡

SECTION 2. The proposed amendments to section 11 of the Act set out in this Bill would ensure that any resident, employee or group of residents or employees who request party status can be a party to a proceeding concerning a nursing home under this Act and that residents and other affected persons may be given an opportunity to make submissions to the Board. Mr. Elston's bill amending the *Nursing Homes Act* has a similar provision.

SECTION 3. Self-explanatory. A similar provision with respect to residents of nursing homes is included in Mr. Elston's bill amending the *Nursing Homes Act*.

Bill 177

1987

An Act to amend the Health Facilities Special Orders Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 10 of the *Health Facilities Special Orders Act, 1983*, being chapter 43, is amended by adding thereto the following subsection:

(4a) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the licence, that it would be just and reasonable to give the licensee that opportunity and that delaying the hearing will not adversely affect the health or safety of the persons served by the health facility.

Opportunity
to comply

2.—(1) Subsection 11 (2) of the said Act is repealed and the following substituted therefor:

(2) Where the licensee holds a licence under the *Nursing Homes Act*, any resident or employee or group of residents or employees who request party status are also parties to proceedings before the Board under this Act.

Idem
R.S.O. 1980,
c. 320

(2a) Where the licensee holds a licence under the *Nursing Homes Act*, the Board may permit any person who is not a party before it, including a resident of the nursing home, a representative of a resident of the nursing home, an employee of the nursing home or any other person who may be affected by its decision to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent.

Submissions

(2) Subsection 11 (3) of the said Act is amended by inserting after “subsection (1)” in the first line “or (2) and a person

who is permitted to make submissions to the Board under subsection (2a)".

(3) Subsection 11 (6) of the said Act is amended by striking out "and heard the evidence and argument of the parties" in the third and fourth lines and inserting in lieu thereof "heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2)".

3. The said Act is amended by adding thereto the following section:

Evidence of disabled person

11a.—(1) Where a party to a proceeding under this Act wishes to call as a witness in the proceeding a person who by reason of age, infirmity or physical disability is unable to attend the proceeding, the members of the Board who are holding the hearing, at the request of the party, may attend upon the witness and take the evidence of the witness.

Medical report sufficient proof

(2) A medical report signed by a legally qualified medical practitioner stating that the practitioner believes the witness is unable to attend a proceeding by reason of age, infirmity or physical disability is *prima facie* proof of the inability of the witness to attend the proceeding.

Opportunity to examine

(3) A person shall not take evidence from a witness under subsection (1) unless reasonable notice of the time for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the witness.

Commence-ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Health Facilities Special Orders Amendment Act, 1987*.

Bill 177

(Chapter 21
Statutes of Ontario, 1987)

An Act to amend the
Health Facilities Special Orders Act, 1983

The Hon. M. Elston
Minister of Health



<i>1st Reading</i>	December 16th, 1986
<i>2nd Reading</i>	February 4th, 1987
<i>3rd Reading</i>	May 25th, 1987
<i>Royal Assent</i>	May 27th, 1987

Bill 177

1987

**An Act to amend the
Health Facilities Special Orders Act, 1983**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 10 of the *Health Facilities Special Orders Act, 1983*, being chapter 43, is amended by adding thereto the following subsection:

(4a) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the licence, that it would be just and reasonable to give the licensee that opportunity and that delaying the hearing will not adversely affect the health or safety of the persons served by the health facility.

Opportunity
to comply

2.—(1) Subsection 11 (2) of the said Act is repealed and the following substituted therefor:

(2) Where the licensee holds a licence under the *Nursing Homes Act*, any resident or employee or group of residents or employees who request party status are also parties to proceedings before the Board under this Act.

Idem
R.S.O. 1980,
c. 320

(2a) Where the licensee holds a licence under the *Nursing Homes Act*, the Board may permit any person who is not a party before it, including a resident of the nursing home, a representative of a resident of the nursing home, an employee of the nursing home or any other person who may be affected by its decision to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent.

Submissions

(2) Subsection 11 (3) of the said Act is amended by inserting after “subsection (1)” in the first line “or (2) and a person

who is permitted to make submissions to the Board under subsection (2a)’’.

(3) Subsection 11 (6) of the said Act is amended by striking out “and heard the evidence and argument of the parties” in the third and fourth lines and inserting in lieu thereof “heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2)’’.

3. The said Act is amended by adding thereto the following section:

Evidence
of disabled
person

11a.—(1) Where a party to a proceeding under this Act wishes to call as a witness in the proceeding a person who by reason of age, infirmity or physical disability is unable to attend the proceeding, the members of the Board who are holding the hearing, at the request of the party, may attend upon the witness and take the evidence of the witness.

Medical
report
sufficient
proof

(2) A medical report signed by a legally qualified medical practitioner stating that the practitioner believes the witness is unable to attend a proceeding by reason of age, infirmity or physical disability is *prima facie* proof of the inability of the witness to attend the proceeding.

Opportunity
to examine

(3) A person shall not take evidence from a witness under subsection (1) unless reasonable notice of the time for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the witness.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Health Facilities Special Orders Amendment Act, 1987*.

Bill 188

An Act to amend the Retail Business Holidays Act

Mr. Ashe



1st Reading January 15th, 1987
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill would allow all retail establishments that sell only books, newspapers or periodicals and all art galleries to be open on Sunday and other public holidays.

Bill 188

1987

An Act to amend the Retail Business Holidays Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause 3 (1) (a) (ii) of the *Retail Business Holidays Act*, being chapter 453 of the Revised Statutes of Ontario, 1980, is amended by striking out “newspapers or periodicals, or” in the first line.

(2) Subsection 3 (3) of the said Act is amended by adding “or” at the end of clause (c) and by adding thereto the following clause:

(d) books, newspapers or periodicals.

(3) Section 3 of the said Act is amended by adding thereto the following subsection:

(3a) Section 2 does not apply in respect of the carrying on of a retail business on a holiday in an art gallery. Idem, art galleries

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Retail Business Holidays Amendment Act, 1987*. Short title

Bill 188

An Act to amend the Retail Business Holidays Act

Mr. Ashe



1st Reading January 15th, 1987

2nd Reading February 12th, 1987

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The Bill would allow retail establishments that sell only books, newspapers or periodicals and art galleries to be open on Sunday and other public holidays, provided that the number of persons engaged in the service of the public does not exceed three and that the area used for serving the public or for selling or displaying is less than 2,400 square feet.

Bill 188

1987

An Act to amend the Retail Business Holidays Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause 3 (1) (a) (ii) of the *Retail Business Holidays Act*, being chapter 453 of the Revised Statutes of Ontario, 1980, is amended by striking out “newspapers or periodicals, or” in the first line.

(2) Subsection 3 (3) of the said Act is amended by adding “or” at the end of clause (c) and by adding thereto the following clause:

- (d) books, newspapers or periodicals provided that no other goods are available for sale except as sundries, the number of persons engaged in the service of the public in the establishment does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

(3) Section 3 of the said Act is amended by adding thereto the following subsection:

(3a) Section 2 does not apply in respect of the carrying on of the retail business of an art gallery on a holiday, where on that day the number of persons engaged in the service of the public in the art gallery does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the art gallery is less than 2,400 square feet.

Idem, art galleries

2. This Act comes into force on the day it receives Royal Assent.

Commencement

3. The short title of this Act is the *Retail Business Holidays Amendment Act, 1987*.

Short title



Bill 188

*(Chapter 36
Statutes of Ontario, 1987)*

An Act to amend the Retail Business Holidays Act

Mr. Ashe

<i>1st Reading</i>	January 15th, 1987
<i>2nd Reading</i>	February 12th, 1987
<i>3rd Reading</i>	June 29th, 1987
<i>Royal Assent</i>	June 29th, 1987

Bill 188

1987

An Act to amend the Retail Business Holidays Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause 3 (1) (a) (ii) of the *Retail Business Holidays Act*, being chapter 453 of the Revised Statutes of Ontario, 1980, is amended by striking out “newspapers or periodicals, or” in the first line.

(2) Subsection 3 (3) of the said Act is amended by adding “or” at the end of clause (c) and by adding thereto the following clause:

- (d) books, newspapers or periodicals provided that no other goods are available for sale except as sundries, the number of persons engaged in the service of the public in the establishment does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet.

(3) Section 3 of the said Act is amended by adding thereto the following subsection:

(3a) Section 2 does not apply in respect of the carrying on of the retail business of an art gallery on a holiday, where on that day the number of persons engaged in the service of the public in the art gallery does not at any time exceed three and the total area used for serving the public or for selling or displaying to the public in the art gallery is less than 2,400 square feet.

Idem, art
galleries

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Retail Business Holidays Amendment Act, 1987*.

Short title

Bill 190

An Act to amend the Mental Health Act

The Hon. M. Elston
Minister of Health



<i>1st Reading</i>	January 28th, 1987
<i>2nd Reading</i>	February 11th, 1987
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Social Development Committee)

SECTION 1.—Subsection 1. The term “informal patient” is defined.

Subsection 2. Clause 1 (j), the definition of “nearest relative”, is repealed. It provides:

- (j) “nearest relative” means,
- (i) *a person to whom the person is married, with whom the person is living and who has attained the age of sixteen years and is mentally competent, or*
 - (ii) *if none or if none is available, a person of the opposite sex with whom the person is living outside marriage in a conjugal relationship and who has attained the age of sixteen years and is mentally competent, if the two persons,*
 - (A) *have cohabited for at least one year,*
 - (B) *are together the parents of a child, or*
 - (C) *have together entered into a cohabitation agreement under section 53 of the Family Law Act, 1986,*
 - (iii) *if none or if none is available, any one of the children who has attained the age of sixteen years and is mentally competent, or*
 - (iv) *if none or if none is available, either of the parents who is mentally competent or the guardian, or*
 - (v) *if none or if none is available, any one of the brothers or sisters who has attained the age of sixteen years and is mentally competent, or*
 - (vi) *if none or if none is available, any other of the next of kin who has attained the age of sixteen years and is mentally competent.*

In the present Act, the nearest relative is given the right to consent on behalf of a patient who is under sixteen or not mentally competent to disclosure of a clinical record and, if the patient is an involuntary patient, to treatment, and is given the right on behalf of an incompetent patient to have access to a clinical record. The Bill establishes a different regime of substitute consent in section 2.

Subsection 3. The term “related medical treatment” is defined.

SECTION 2. The Bill gives persons the right while they are mentally competent to appoint a representative to consent on their behalf in the event that they become not mentally competent for the purposes of the *Mental Health Act*. It provides a rank order for persons to consent on behalf of a patient who is not mentally competent, as follows:

1. The person appointed as the patient’s committee.
2. The patient’s representative.
3. The patient’s married or common law spouse.
4. A child of the patient.
5. A parent of the patient or person with custody of the patient.
6. A brother or sister of the patient.
7. Another next of kin of the patient.

8. The Official Guardian.

Persons are required to give or refuse consent on behalf of a patient on the basis of the patient's wishes, if known, and on the basis of the best interest of the patient otherwise.

SECTION 3. Subsection 15 (3) of the Act authorizes a judge to order a person to attend a psychiatric facility for treatment. This is now repealed.

SECTIONS 4 and 5. Ancillary to sections 1 and 2.

SECTION 6. Section 30a of the Act is amended to require notice to the person and to the legal aid area director when application is made for assessment or a treatment order.

SECTION 7. Subsection 31 (4) of the Act provides for a mandatory review on every fourth certificate of renewal.

SECTIONS 8, 9 and 10. Sections 32, 32a and 33f of the Act relate to the time period of a certificate during a hearing or appeal.

SECTION 11. Section 35 of the Act sets out criteria for the giving of psychiatric treatment and other related medical treatment.

SECTION 12. Sections 35a, 35b and 35c of the Act relate to applications to the review board, the authority of the review board, treatment pending an appeal and to persons remanded or detained under the *Criminal Code*.

Bill 190

1987

An Act to amend the Mental Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:



1.—(1) Section 1 of the *Mental Health Act*, being chapter 262 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following clause:

- (ba) “informal patient” means a person who is a patient in a psychiatric facility under the authority of a parent, guardian or committee of the person appointed for the patient under the *Mental Incompetency Act*.

R.S.O. 1980,
c. 264

(2) Clause 1 (j) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following clause:

- (sa) “related medical treatment” means medical treatment or procedures necessary for,
- (i) the safe and effective administration of the psychiatric treatment, or
 - (ii) the control of the unwanted effects of the psychiatric treatment.



2. The said Act is amended by adding thereto the following sections:

1a.—(1) A person may give or refuse consent on behalf of a patient who is not mentally competent if the person has attained the age of sixteen years, is apparently mentally competent, is available and willing to give or refuse consent and is described in one of the following paragraphs:

Substitute
consent

R.S.O. 1980,
c. 264

1. The committee of the person appointed for the patient under the *Mental Incompetency Act*.
2. The patient's representative appointed under section 1b or 1c.
3. The person to whom the patient is married or the person of the opposite sex with whom the patient is living outside marriage in a conjugal relationship or was living outside marriage in a conjugal relationship immediately before being admitted to the psychiatric facility, if in the case of unmarried persons they,
 - i. have cohabited for at least one year,
 - ii. are together the parents of a child, or
 - iii. have together entered into a cohabitation agreement under section 53 of the *Family Law Act, 1986*.
4. A child of the patient.
5. A parent of the patient or a person who has lawful custody of the patient.
6. A brother or sister of the patient.
7. Any other next of kin of the patient.
8. The Official Guardian.

Refusal

(2) If a person in a category in subsection (1) refuses consent on the patient's behalf, the consent of a person in a subsequent category is not valid.

Preference

(3) If two or more persons who are described in different paragraphs of subsection (1) claim the authority to give or refuse consent on behalf of a patient, the claim of the person who is described in the paragraph occurring first in that subsection prevails.

Conflict

(4) If two or more persons who are described in the same paragraph of subsection (1) claim the authority to give or refuse consent on behalf of a patient, if they disagree about whether to give or refuse consent and if their claims would prevail over any other claims under subsection (3), the refusal prevails.

(5) A person described in paragraph 3, 4, 5, 6 or 7 of subsection (1) may not give or refuse consent on a patient's behalf unless the person makes a statement in writing certifying,

Consent
by
relative

- (a) the person's relationship to the patient;
- (b) that the person has been in personal contact with the patient over the preceding twelve month period;
- (c) that the person is willing to assume the responsibility for consent or refusing consent; and
- (d) that the person is not aware of any other person described in the same paragraph or in a previous paragraph who claims the authority to give or refuse consent.

(6) A person authorized to give or refuse consent on behalf of a patient shall do so in accordance with the wishes of the patient if the person knows that the patient expressed any such wishes when apparently mentally competent and in accordance with the best interests of the patient if the person does not know of any such wishes.

Basis for
substitute
consent

(7) A person who seeks another person's consent on a patient's behalf is entitled to rely on the accuracy of the other person's written statement under subsection (5), unless it is not reasonable to do so.

Reliance
on
statement

(8) A person seeking consent on behalf of a patient is not liable for failing to request the consent of another person entitled to give or refuse consent on behalf of the patient if, after reasonable inquiries, the person did not find the other person.

Reasonable
inquiries

1b.—(1) A person who has attained the age of sixteen years and is mentally competent to do so has the right to appoint a representative who has attained the age of sixteen years and is apparently mentally competent to give or refuse consent on behalf of the person for the purpose of paragraph 2 of subsection 1a (1).

Patient's
representative

(2) An appointment of a representative shall be made in writing in the presence of a witness.

Appointment
in writing

(3) An appointment may be subject to such conditions and restrictions, if any, as are contained in it and not inconsistent with this Act.

Conditions

Notice by
physician

↓
(4) The attending physician shall inform the patient in writing of the patient's right under subsection (1) within forty-eight hours after the patient is admitted or registered to the psychiatric facility.

Transitional

(5) As soon as practicable, the officer in charge shall inform all persons who are patients of the facility at the time of the coming into force of this section in writing of their rights under subsection (1). ↑

Contents
of notice

(6) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this Act.

Appointment
of repre-
sentative

(7) If a patient gives or transmits to the officer in charge a statement in writing appointing a representative, the officer in charge shall transmit the statement to the representative forthwith.

Revocation

(8) A person who has appointed a representative may revoke in writing the appointment and may appoint in writing a new representative while mentally competent to do so, and subsection (7) applies with necessary modifications in respect of the revocation and new appointment.

Board
appointed
representative

↓
1c.—(1) A patient who has attained the age of sixteen years, is not mentally competent to appoint a representative and has not named a representative under section 1b, has the right to apply to the board for the appointment of a representative requested by the patient to give or refuse consent on behalf of the patient for the purpose of paragraph 2 of subsection 1a (1).

Notice by
physician

(2) An attending physician who determines that a patient is not competent to appoint a representative shall as soon as practicable inform the patient in writing of the patient's right under subsection (1).

Contents of
notice

(3) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this Act.

Parties

(4) The patient, the person proposed as a representative, the person who would be authorized under subsection 1a (1) to consent on behalf of the patient if no order is made by the board under this section and such other persons as the board may specify are parties to a proceeding before the board under this section.

(5) The board shall appoint a person as a representative for a patient only if the patient approves of the appointment and the board is satisfied that the person, Appointment

- (a) has attained the age of sixteen years;
- (b) is apparently mentally competent to give or refuse consent on behalf of the patient;
- (c) consents to the appointment; and
- (d) in the board's opinion it is in the patient's interest to appoint the person as a representative.

(6) The board may appoint a person other than the person requested by the patient to be the patient's representative. Idem

(7) An appointment made by the board may be subject to such conditions and restrictions, if any, as are approved by the patient, set out in the appointment and not inconsistent with this Act. Conditions

1d.—(1) A person who has not attained sixteen years of age is presumed to be not mentally competent to consent for the purposes of this Act. Person sixteen years of age


(2) The presumption that a person is not mentally competent is subject to a determination by the attending physician, the review board or a court, pursuant to subsection 29a (14), section 35 or 35b, that the person is mentally competent. Limitation

3. Subsection 15 (3) of the said Act is repealed.

4.—(1) Clause 29 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) “patient” includes former patient, out-patient, former out-patient and anyone who is or has been detained in a psychiatric facility.

(2) Clause 29 (3) (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has attained the age of sixteen years and” in the first and second lines.

(3) Clause 29 (3) (b) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has not attained the age of sixteen years or” in the first and second lines. 

(4) The said clause 29 (3) (b) is further amended by striking out “nearest relative of the patient” in the third and fourth lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(5) Clause 29 (3) (e) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has not attained the age of sixteen years or” in the second line.

(6) The said clause 29 (3) (e) is further amended by striking out “nearest relative of the patient” in the third and fourth lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(7) Subsection 29 (3a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed.

(8) Clause 29 (9) (b) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “nearest relative of the patient” in the third line and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(9) Clause 29 (9) (c) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “nearest relative of the patient” in the sixth and seventh lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

5.—(1) Subsection 29a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Patient access
to clinical
record

(1) A patient who is mentally competent is entitled to examine and copy at the patient's own expense the clinical record of the patient or a copy of the record.

(2) Subsection 29a (14) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after “determined” in the first line “or presumed”.

(3) Subsection 29a (16) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “has not attained the age of sixteen years or” in the first and second lines and by striking out “patient's nearest relative” in the second and third lines and inserting in

lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(4) Subsection 29a (17) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “patient’s nearest relative” in the third line and inserting in lieu thereof “person”.

6. Section 30a of the said Act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 66 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections:

(1c) The attending physician of a person who is the subject of an application for assessment under section 9 or of an order under section 26 shall give or transmit to the person written notice of the application or order.

Notice of
application or
order

(1d) A physician who applies to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to a patient shall give or transmit written notice of the application to the patient and to the area director for the area, in accordance with the *Legal Aid Act*, in which the psychiatric facility is located.

Notice of
application
for order

R.S.O. 1980,
c. 234

(1e) The notices specified in subsections (1), (1b) and (1c), excluding the notice to the area director, shall inform the patient or person,

Information

(a) of the reasons for the detention; and

(b) that he or she has the right to retain and instruct counsel without delay.

7.—(1) Subsection 31 (2) of the said Act is amended by adding at the commencement thereof “In addition to the applications under subsection (4)”.

(2) Section 31 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsection:

(5) A waiver by an involuntary patient of an application or of the right to an application mentioned in subsection (4) is a nullity.

Waiver

8. Section 32 of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Hearing
deemed
abandoned

32. Except as provided in subsection 33f (1e), where an appeal is taken against a certificate of involuntary admission or a certificate of renewal and the time period for the certificate under subsection 14 (4) expires before a decision is rendered, the appeal shall be deemed to be abandoned whether or not the certificate is renewed.

9. Section 32a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Review of
admission or
renewal

32a.—(1) On the hearing of an application, the review board shall promptly review the patient's status to determine whether or not the prerequisites set out in this Act for admission as an involuntary patient continue to be met at the time of the hearing of the application.

Confirming
order

(2) The review board by order may confirm the patient's status as an involuntary patient if the review board determines that the prerequisites set out in this Act for admission as an involuntary patient were met at the time of the hearing of the application.

Rescinding
order

(3) The review board by order shall rescind the certificate if the review board determines that the prerequisites set out in this Act for admission as an involuntary patient were not met at the time of the hearing of the application.

Application
of order

(4) An order of the review board confirming or rescinding a certificate applies to the certificate of involuntary admission or the certificate of renewal in force immediately before the making of the order.

10.—(1) Subsection 33f (1d) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after "days" in the fifth line "excluding Saturday and holidays".

(2) Subsection 33f (1e) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Extension of
certificate for
appeal

(1e) Where, before a certificate of involuntary admission, a certificate of renewal or an extension of a certificate expires, a party to the appeal other than the patient or the person acting on the patient's behalf applies to the court for an extension of the certificate beyond the time period for the certificate under subsection 14 (4), the court may by order extend the effectiveness of the certificate.

(3) Subsection 33f (1f) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding thereto the following clause:

- (d) until the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14 (5).

(4) Section 33f of the said Act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections:

(1j) Where an appeal is taken from a decision of the review board to confirm a certificate of involuntary admission or a certificate of renewal, the certificate is effective until, Effectiveness of certificate

- (a) the certificate is confirmed or rescinded by the court;
- (b) the certificate is rescinded by the attending physician;
- (c) forty-eight hours after notice is given to the attending physician that the party appealing has withdrawn the appeal; or
- (d) the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14 (5).

(1k) Notwithstanding subsections (1) to (1i), the attending physician shall examine the patient at the intervals that would have applied under section 14 and shall complete and file with the officer in charge a statement in writing as to whether or not the patient meets the criteria set out in subsection 14 (5). Examination

11. Section 35 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

35.—(1) In this section and in sections 35a, 35b and 35c, Interpretation

- (a) “electroconvulsive therapy” means the procedure for the treatment of certain mental disorders that induces, by electrical stimulation of the brain, a series of generalized convulsions;

- (b) “having the ability to understand the subject matter in respect of which consent is requested” in the definition of “mentally competent” means having the ability to understand the nature of the illness for which treatment is proposed and the treatment proposed; and
- (c) “psychosurgery” means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

Consent
to
treatment

(2) Psychiatric and other related medical treatment shall not be given to a patient,

|(a) where the patient is mentally competent, without the voluntary, informed consent of the patient;

|(b) where the patient is not mentally competent,

(i) without the consent of a person authorized by section 1a to consent on behalf of the patient,

(ii) unless the review board has made an order authorizing the giving of the specified psychiatric and other related medical treatment, or

(iii) unless a physician certifies in writing that there is imminent and serious danger to the life, a limb or a vital organ of the patient requiring immediate treatment and the physician believes that delay in obtaining consent would endanger the life, a limb or a vital organ of the patient.



Restriction


(3) Subclause (2) (b) (iii) only authorizes the giving of such treatment as is necessary to preserve the life, a limb or a vital organ of the patient.

Psycho-
surgery



(4) The consent to psychiatric and other related medical treatment,

(a) of an involuntary patient; or


- (b) of a person authorized by this Act to consent on behalf of a patient,


does not include and shall not be deemed to include psychosurgery. 

(5) A person authorized to give or refuse consent on behalf of a patient shall consider the following factors to determine whether a specified psychiatric treatment and other related medical treatment are in the best interests of a patient, Best interests

- (a) whether the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) whether the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment;
-  (c) whether the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) whether the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c). 

12. The said Act is further amended by renumbering section 35a, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, as section 35d and by adding thereto the following sections:

 **35a.**—(1) The attending physician of an involuntary patient may apply to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to the patient where the patient is not mentally competent, Application to review board

- (a) if a person authorized under section 1a to consent to such treatment on the patient's behalf has refused to consent; or
- (b) under the circumstances described in subsection 1a (3). 

(2) The review board shall not consider an application unless it is accompanied by statements signed by the attending physician and a psychiatrist who is not a member of the medi- Material on application

cal staff of the psychiatric facility, each stating that they have examined the patient and that they are of the opinion that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- ➡ (c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c). ➡

Reasons
for
opinions

(3) Each of the opinions in the statements described in subsection (2) shall be supported with reasons.

Basis for
decision

(4) The review board by order may authorize the giving of the specified psychiatric and other related medical treatment if it is satisfied that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- ➡ (c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c). ➡

Terms and
conditions

(5) An order may include terms and conditions and shall specify the period of time during which it is effective.

No psycho-
surgery,
E.C.T.

(6) No order of the board is or shall be deemed to be authority to perform psychosurgery or to administer electroconvulsive therapy.

(7) The attending physician, the patient and such other persons as the review board may specify are parties to the proceedings before the review board.

Parties

(8) Where the patient is not mentally competent,

Idem

(a) the person authorized under section 1a to consent on the patient's behalf; or

(b) under the circumstances described in subsection 1a (3), all of the persons described therein,

are also parties to the proceedings.

(9) The officer in charge shall notify the Official Guardian forthwith after an application is made under this section or section 35b in respect of a patient determined to be not mentally competent to consent to psychiatric and other related medical treatment where it appears to the officer in charge that the patient will not be represented at the forthcoming hearing.

Notice to
Official
Guardian

(10) Upon receiving a notice under subsection (9), the Official Guardian shall represent the patient at the hearing of the application unless the Official Guardian is satisfied that another person will represent the patient.

Official
Guardian to
ensure
patient
represented

(11) Where a party appeals an order authorizing the providing of specified psychiatric and other related medical treatment or a specified course of psychiatric and other related medical treatment to a patient, the treatment or course of treatment shall not be provided pending the outcome of the appeal, unless otherwise ordered by a judge of the court appealed to.

Treatment
pending
appeal

(12) Sections 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1).

Procedure

35b.—(1) A patient determined or presumed to be not mentally competent for the purpose of section 1a, 35 or 35a may apply in the prescribed form to the review board to inquire into whether the patient is not mentally competent.

Application
for review of
patient
determined
incompetent

(2) If an application is made under subsection (1), the proposed psychiatric treatment shall not be given until the matter is determined by the review board or, where the patient appeals its decision, until the matter is finally determined, unless otherwise ordered by a judge of the court appealed to.

Idem

Idem

(3) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1).

Treatment
for persons
detained
under
R.S.C. 1970,
c. C-34

35c.—(1) Sections 35 and 35b apply with necessary modifications to a person who is remanded or detained in a psychiatric facility pursuant to the *Criminal Code* (Canada), as if the person were an involuntary patient.



Idem

(2) Section 35a applies with necessary modifications to a person where the review board is satisfied that the person,

R.S.C. 1970,
c. C-34

(a) is remanded or detained in a psychiatric facility pursuant to the *Criminal Code* (Canada); and

(b) is suffering from mental disorder of a nature or quality that likely would result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

if the person did not remain in the custody of a psychiatric facility,

as if the person were an involuntary patient.



Commence-
ment

13. This Act comes into force on the day it receives Royal Assent.

Short title

14. The short title of this Act is the *Mental Health Amendment Act, 1987*.

Bill 190

*(Chapter 37
Statutes of Ontario, 1987)*

An Act to amend the Mental Health Act

The Hon. M. Elston
Minister of Health

<i>1st Reading</i>	January 28th, 1987
<i>2nd Reading</i>	February 11th, 1987
<i>3rd Reading</i>	June 15th, 1987
<i>Royal Assent</i>	June 29th, 1987

Bill 190**1987****An Act to amend the Mental Health Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Mental Health Act*, being chapter 262 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following clause:

(ba) “informal patient” means a person who is a patient in a psychiatric facility under the authority of a parent, guardian or committee of the person appointed for the patient under the *Mental Incompetency Act*.

R.S.O. 1980,
c. 264

(2) Clause 1 (j) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following clause:

(sa) “related medical treatment” means medical treatment or procedures necessary for,

(i) the safe and effective administration of the psychiatric treatment, or

(ii) the control of the unwanted effects of the psychiatric treatment.

2. The said Act is amended by adding thereto the following sections:

1a.—(1) A person may give or refuse consent on behalf of a patient who is not mentally competent if the person has attained the age of sixteen years, is apparently mentally competent, is available and willing to give or refuse consent and is described in one of the following paragraphs:

Substitute
consent

R.S.O. 1980,
c. 264

1. The committee of the person appointed for the patient under the *Mental Incompetency Act*.
2. The patient's representative appointed under section 1b or 1c.
3. The person to whom the patient is married or the person of the opposite sex with whom the patient is living outside marriage in a conjugal relationship or was living outside marriage in a conjugal relationship immediately before being admitted to the psychiatric facility, if in the case of unmarried persons they,
 - i. have cohabited for at least one year,
 - ii. are together the parents of a child, or
 - iii. have together entered into a cohabitation agreement under section 53 of the *Family Law Act, 1986*.
4. A child of the patient.
5. A parent of the patient or a person who has lawful custody of the patient.
6. A brother or sister of the patient.
7. Any other next of kin of the patient.
8. The Official Guardian.

1986, c. 4

Refusal

(2) If a person in a category in subsection (1) refuses consent on the patient's behalf, the consent of a person in a subsequent category is not valid.

Preference

(3) If two or more persons who are described in different paragraphs of subsection (1) claim the authority to give or refuse consent on behalf of a patient, the claim of the person who is described in the paragraph occurring first in that subsection prevails.

Conflict

(4) If two or more persons who are described in the same paragraph of subsection (1) claim the authority to give or refuse consent on behalf of a patient, if they disagree about whether to give or refuse consent and if their claims would prevail over any other claims under subsection (3), the refusal prevails.

(5) A person described in paragraph 3, 4, 5, 6 or 7 of subsection (1) may not give or refuse consent on a patient's behalf unless the person makes a statement in writing certifying,

Consent
by
relative

- (a) the person's relationship to the patient;
- (b) that the person has been in personal contact with the patient over the preceding twelve month period;
- (c) that the person is willing to assume the responsibility for consent or refusing consent; and
- (d) that the person is not aware of any other person described in the same paragraph or in a previous paragraph who claims the authority to give or refuse consent.

(6) A person authorized to give or refuse consent on behalf of a patient shall do so in accordance with the wishes of the patient if the person knows that the patient expressed any such wishes when apparently mentally competent and in accordance with the best interests of the patient if the person does not know of any such wishes.

Basis for
substitute
consent

(7) A person who seeks another person's consent on a patient's behalf is entitled to rely on the accuracy of the other person's written statement under subsection (5), unless it is not reasonable to do so.

Reliance
on
statement

(8) A person seeking consent on behalf of a patient is not liable for failing to request the consent of another person entitled to give or refuse consent on behalf of the patient if, after reasonable inquiries, the person did not find the other person.

Reasonable
inquiries

1b.—(1) A person who has attained the age of sixteen years and is mentally competent to do so has the right to appoint a representative who has attained the age of sixteen years and is apparently mentally competent to give or refuse consent on behalf of the person for the purpose of paragraph 2 of subsection 1a (1).

Patient's
representative

(2) An appointment of a representative shall be made in writing in the presence of a witness.

Appointment
in writing

(3) An appointment may be subject to such conditions and restrictions, if any, as are contained in it and not inconsistent with this Act.

Conditions

Notice by
physician

(4) The attending physician shall inform the patient in writing of the patient's right under subsection (1) within forty-eight hours after the patient is admitted or registered to the psychiatric facility.

Transitional

(5) As soon as practicable, the officer in charge shall inform all persons who are patients of the facility at the time of the coming into force of this section in writing of their rights under subsection (1).

Contents
of notice

(6) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this Act.

Appointment
of repre-
sentative

(7) If a patient gives or transmits to the officer in charge a statement in writing appointing a representative, the officer in charge shall transmit the statement to the representative forthwith.

Revocation

(8) A person who has appointed a representative may revoke in writing the appointment and may appoint in writing a new representative while mentally competent to do so, and subsection (7) applies with necessary modifications in respect of the revocation and new appointment.

Board
appointed
representative

1c.—(1) A patient who has attained the age of sixteen years, is not mentally competent to appoint a representative and has not named a representative under section 1b, has the right to apply to the board for the appointment of a representative requested by the patient to give or refuse consent on behalf of the patient for the purpose of paragraph 2 of subsection 1a (1).

Notice by
physician

(2) An attending physician who determines that a patient is not competent to appoint a representative shall as soon as practicable inform the patient in writing of the patient's right under subsection (1).

Contents of
notice

(3) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this Act.

Parties

(4) The patient, the person proposed as a representative, the person who would be authorized under subsection 1a (1) to consent on behalf of the patient if no order is made by the board under this section and such other persons as the board may specify are parties to a proceeding before the board under this section.

(5) The board shall appoint a person as a representative for a patient only if the patient approves of the appointment and the board is satisfied that the person, Appointment

- (a) has attained the age of sixteen years;
- (b) is apparently mentally competent to give or refuse consent on behalf of the patient;
- (c) consents to the appointment; and
- (d) in the board's opinion it is in the patient's interest to appoint the person as a representative.

(6) The board may appoint a person other than the person requested by the patient to be the patient's representative. Idem

(7) An appointment made by the board may be subject to such conditions and restrictions, if any, as are approved by the patient, set out in the appointment and not inconsistent with this Act. Conditions

1d.—(1) A person who has not attained sixteen years of age is presumed to be not mentally competent to consent for the purposes of this Act. Person sixteen years of age

(2) The presumption that a person is not mentally competent is subject to a determination by the attending physician, the review board or a court, pursuant to subsection 29a (14), section 35 or 35b, that the person is mentally competent. Limitation

3. Subsection 15 (3) of the said Act is repealed.

4.—(1) Clause 29 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) “patient” includes former patient, out-patient, former out-patient and anyone who is or has been detained in a psychiatric facility.

(2) Clause 29 (3) (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has attained the age of sixteen years and” in the first and second lines.

(3) Clause 29 (3) (b) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has not attained the age of sixteen years or” in the first and second lines.

(4) The said clause 29 (3) (b) is further amended by striking out “nearest relative of the patient” in the third and fourth lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(5) Clause 29 (3) (e) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has not attained the age of sixteen years or” in the second line.

(6) The said clause 29 (3) (e) is further amended by striking out “nearest relative of the patient” in the third and fourth lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(7) Subsection 29 (3a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed.

(8) Clause 29 (9) (b) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “nearest relative of the patient” in the third line and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(9) Clause 29 (9) (c) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “nearest relative of the patient” in the sixth and seventh lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

5.—(1) Subsection 29a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Patient access
to clinical
record

(1) A patient who is mentally competent is entitled to examine and copy at the patient's own expense the clinical record of the patient or a copy of the record.

(2) Subsection 29a (14) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after “determined” in the first line “or presumed”.

(3) Subsection 29a (16) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “has not attained the age of sixteen years or” in the first and second lines and by striking out “patient's nearest relative” in the second and third lines and inserting in

lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(4) Subsection 29a (17) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “patient’s nearest relative” in the third line and inserting in lieu thereof “person”.

6. Section 30a of the said Act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 66 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections:

(1c) The attending physician of a person who is the subject of an application for assessment under section 9 or of an order under section 26 shall give or transmit to the person written notice of the application or order.

Notice of
application or
order

(1d) A physician who applies to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to a patient shall give or transmit written notice of the application to the patient and to the area director for the area, in accordance with the *Legal Aid Act*, in which the psychiatric facility is located.

Notice of
application
for order

R.S.O. 1980,
c. 234

(1e) The notices specified in subsections (1), (1b) and (1c), excluding the notice to the area director, shall inform the patient or person,

Information

(a) of the reasons for the detention; and

(b) that he or she has the right to retain and instruct counsel without delay.

7.—(1) Subsection 31 (2) of the said Act is amended by adding at the commencement thereof “In addition to the applications under subsection (4)”.

(2) Section 31 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsection:

(5) A waiver by an involuntary patient of an application or of the right to an application mentioned in subsection (4) is a nullity.

Waiver

8. Section 32 of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Hearing
deemed
abandoned

32. Except as provided in subsection 33f (1e) or (1j), where an appeal is taken against a certificate of involuntary admission or a certificate of renewal and the time period for the certificate under subsection 14 (4) expires before a decision is rendered, the appeal shall be deemed to be abandoned whether or not the certificate is renewed.

9. Section 32a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Review of
admission or
renewal

32a.—(1) On the hearing of an application, the review board shall promptly review the patient's status to determine whether or not the prerequisites set out in this Act for admission as an involuntary patient continue to be met at the time of the hearing of the application.

Confirming
order

(2) The review board by order may confirm the patient's status as an involuntary patient if the review board determines that the prerequisites set out in this Act for admission as an involuntary patient were met at the time of the hearing of the application.

Rescinding
order

(3) The review board by order shall rescind the certificate if the review board determines that the prerequisites set out in this Act for admission as an involuntary patient were not met at the time of the hearing of the application.

Application
of order

(4) An order of the review board confirming or rescinding a certificate applies to the certificate of involuntary admission or the certificate of renewal in force immediately before the making of the order.

10.—(1) Subsection 33f (1d) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after "days" in the fifth line "excluding Saturday and holidays".

(2) Subsection 33f (1e) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Extension of
certificate for
appeal

(1e) Where, before a certificate of involuntary admission, a certificate of renewal or an extension of a certificate expires, a party to the appeal other than the patient or the person acting on the patient's behalf applies to the court for an extension of the certificate beyond the time period for the certificate under subsection 14 (4), the court may by order extend the effectiveness of the certificate.

(3) Subsection 33f (1f) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding thereto the following clause:

- (d) until the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14 (5).

(4) Section 33f of the said Act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections:

(1j) Where an appeal is taken from a decision of the review board to confirm a certificate of involuntary admission or a certificate of renewal, the certificate is effective until,

Effectiveness
of certificate

- (a) the certificate is confirmed or rescinded by the court;
- (b) the certificate is rescinded by the attending physician;
- (c) forty-eight hours after notice is given to the attending physician that the party appealing has withdrawn the appeal; or
- (d) the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14 (5).

(1k) Notwithstanding subsections (1) to (1i), the attending physician shall examine the patient at the intervals that would have applied under section 14 and shall complete and file with the officer in charge a statement in writing as to whether or not the patient meets the criteria set out in subsection 14 (5).

Examination

11. Section 35 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

35.—(1) In this section and in sections 35a, 35b and 35c,

Interpretation

- (a) “electroconvulsive therapy” means the procedure for the treatment of certain mental disorders that induces, by electrical stimulation of the brain, a series of generalized convulsions;

- (b) “having the ability to understand the subject matter in respect of which consent is requested” in the definition of “mentally competent” means having the ability to understand the nature of the illness for which treatment is proposed and the treatment proposed; and
- (c) “psychosurgery” means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

Consent
to
treatment

(2) Psychiatric and other related medical treatment shall not be given to a patient,

- (a) where the patient is mentally competent, without the voluntary, informed consent of the patient;
- (b) where the patient is not mentally competent,
 - (i) without the consent of a person authorized by section 1a to consent on behalf of the patient,
 - (ii) unless the review board has made an order authorizing the giving of the specified psychiatric and other related medical treatment, or
 - (iii) unless a physician certifies in writing that there is imminent and serious danger to the life, a limb or a vital organ of the patient requiring immediate treatment and the physician believes that delay in obtaining consent would endanger the life, a limb or a vital organ of the patient.

Restriction

(3) Subclause (2) (b) (iii) only authorizes the giving of such treatment as is necessary to preserve the life, a limb or a vital organ of the patient.

Psycho-
surgery

(4) The consent to psychiatric and other related medical treatment,

- (a) of an involuntary patient; or

- (b) of a person authorized by this Act to consent on behalf of a patient,

does not include and shall not be deemed to include psychosurgery.

(5) A person authorized to give or refuse consent on behalf of a patient shall consider the following factors to determine whether a specified psychiatric treatment and other related medical treatment are in the best interests of a patient, Best interests

- (a) whether the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) whether the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment;
- (c) whether the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) whether the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

12. The said Act is further amended by renumbering section 35a, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, as section 35d and by adding thereto the following sections:

35a.—(1) The attending physician of an involuntary patient may apply to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to the patient where the patient is not mentally competent, Application to review board

- (a) if a person authorized under section 1a to consent to such treatment on the patient's behalf has refused to consent; or
- (b) under the circumstances described in subsection 1a (4).

(2) The review board shall not consider an application unless it is accompanied by statements signed by the attending physician and a psychiatrist who is not a member of the medi- Material on application

cal staff of the psychiatric facility, each stating that they have examined the patient and that they are of the opinion that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- (c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

Reasons
for
opinions

(3) Each of the opinions in the statements described in subsection (2) shall be supported with reasons.

Basis for
decision

(4) The review board by order may authorize the giving of the specified psychiatric and other related medical treatment if it is satisfied that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- (c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

Terms and
conditions

(5) An order may include terms and conditions and shall specify the period of time during which it is effective.

No psycho-
surgery,
E.C.T.

(6) No order of the board is or shall be deemed to be authority to perform psychosurgery or to administer electroconvulsive therapy.

(7) The attending physician, the patient and such other persons as the review board may specify are parties to the proceedings before the review board.

Parties

(8) Where the patient is not mentally competent,

Idem

(a) the person authorized under section 1a to consent on the patient's behalf; or

(b) under the circumstances described in subsection 1a (4), all of the persons described therein,

are also parties to the proceedings.

(9) The officer in charge shall notify the Official Guardian forthwith after an application is made under this section or section 35b in respect of a patient determined to be not mentally competent to consent to psychiatric and other related medical treatment where it appears to the officer in charge that the patient will not be represented at the forthcoming hearing.

Notice to
Official
Guardian

(10) Upon receiving a notice under subsection (9), the Official Guardian shall represent the patient at the hearing of the application unless the Official Guardian is satisfied that another person will represent the patient.

Official
Guardian to
ensure
patient
represented

(11) Where a party appeals an order authorizing the providing of specified psychiatric and other related medical treatment or a specified course of psychiatric and other related medical treatment to a patient, the treatment or course of treatment shall not be provided pending the outcome of the appeal, unless otherwise ordered by a judge of the court appealed to.

Treatment
pending
appeal

(12) Sections 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1).

Procedure

35b.—(1) A patient determined or presumed to be not mentally competent for the purpose of section 35 may apply in the prescribed form to the review board to inquire into whether the patient is not mentally competent.

Application
for review of
patient
determined
incompetent

(2) If an application is made under subsection (1), the proposed psychiatric treatment shall not be given until the matter is determined by the review board or, where the patient appeals its decision, until the matter is finally determined, unless otherwise ordered by a judge of the court appealed to.

Idem

Idem (3) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1).

Treatment
for persons
detained
under
R.S.C. 1970,
c. C-34

35c.—(1) Sections 35 and 35b apply with necessary modifications to a person who is remanded or detained in a psychiatric facility pursuant to the *Criminal Code* (Canada), as if the person were an involuntary patient.

Idem (2) Section 35a applies with necessary modifications to a person where the review board is satisfied that the person,

R.S.C. 1970,
c. C-34

(a) is remanded or detained in a psychiatric facility pursuant to the *Criminal Code* (Canada); and

(b) is suffering from mental disorder of a nature or quality that likely would result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

if the person did not remain in the custody of a psychiatric facility,

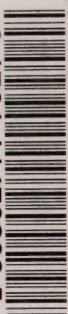
as if the person were an involuntary patient.

Commence-
ment

13. This Act comes into force on the day it receives Royal Assent.

Short title

14. The short title of this Act is the *Mental Health Amendment Act, 1987*.



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